Chapter 365-190 WAC

MINIMUM GUIDELINES TO CLASSIFY AGRICULTURE, FOREST, MINERAL LANDS AND CRITICAL AREAS

WAC

PART ONE
PURPOSE/AUTHORITY

WAC 365-190-010 Authority. This chapter is established pursuant to RCW 36.70A.050.

[Statutory Authority: RCW 36.70A.050. 91-07-041, § 365-190-010, filed 3/15/91, effective 4/15/91.]

WAC 365-190-020 Purpose. The intent of this chapter is to establish minimum guidelines to assist all counties and cities statewide in classifying agricultural lands, forest lands, mineral resource lands, and critical areas. These guidelines shall be considered by counties and cities in designating these lands.

Growth management, natural resource land conservation, and critical areas protection share problems related to governmental costs and efficiency. Sprawl and the unwise development of natural resource lands or areas susceptible to natural hazards may lead to inefficient use of limited public resources, jeopardize environmental resource functions and values, subject persons and property to unsafe conditions, and affect the perceived quality of life. It is more costly to remedy the loss of natural resource lands or critical areas than to conserve and protect them from loss or degradation. The inherent economic, social, and cultural values of natural resource lands and critical areas should be considered in the development of strategies designed to conserve and protect lands.

In recognition of these common concerns, classification and designation of natural resource lands and critical areas is intended to assure the long-term conservation of natural resource lands and to preclude land uses and developments which are incompatible with critical areas. There are qualitative differences between and among natural resource lands and critical areas. Not all areas and ecosystems are critical for the same reasons. Some are critical because of the hazard they present to public health and safety, some because of the values they represent to the public welfare. In some cases, the risk posed to the public by use or development of a critical area can be mitigated or reduced by engineering or design; in other cases that risk cannot be effectively reduced except by avoidance of the critical area. Hence, classification and designation of critical areas is intended to lead counties and cities to recognize the differences among these areas, and to develop appropriate regulatory and nonregulatory actions in response.

Counties and cities required or opting to plan under the Growth Management Act of 1990 should consider the definitions and guidelines in this chapter when preparing development regulations which preclude uses and development incompatible with critical areas (see RCW 36.70A.060). Precluding incompatible uses and development does not mean a prohibition of all uses or development. Rather, it means governing changes in land uses, new activities, or development that could adversely affect critical areas. Thus for each critical area, counties and cities planning under the act should define classification schemes and prepare development regulations that govern changes in land uses and new activities by prohibiting clearly inappropriate actions and restricting, allowing, or conditioning other activities as appropriate.

It is the intent of these guidelines that critical areas designations overlay other land uses including designated natural resource lands. That is, if two or more land use designations apply to a given parcel or a portion of a parcel, both or all designations shall be made. Regarding natural resource lands, counties and cities should allow existing and ongoing resource management operations, that have long-term commercial significance, to continue. Counties and cities should encourage utilization of best management practices where existing and ongoing resource management operations that have long-term commercial significance include designated critical areas. Future operations or expansion of existing operations should be done in consideration of protecting critical areas.

[Statutory Authority: RCW 36.70A.050. 91-07-041, § 365-190-020, filed 3/15/91, effective 4/15/91.]

PART TWO
GENERAL REQUIREMENTS

WAC 365-190-030 Definitions. (1) Agricultural land is land primarily devoted to the commercial production of horticultural, viticultural, floricultural, dairy, apiary, vegetable, or animal products or of berries, grain, hay, straw, turf, seed, Christmas trees not subject to the excise tax imposed by RCW 84.33.100 through 84.33.140, or livestock, and that has long-term commercial significance for agricultural production.

(2) Areas with a critical recharging effect on aquifers used for potable water are areas where an aquifer that is a source of drinking water is vulnerable to contamination that would affect the potability of the water.

(3) City means any city or town, including a code city.

(4) Critical areas include the following areas and ecosystems:

(a) Wetlands;

(b) Areas with a critical recharging effect on aquifers used for potable water;

(c) Fish and wildlife habitat conservation areas;

(d) Frequently flooded areas; and

(e) Geologically hazardous areas.

(5) Erosion hazard areas are those areas containing soils which, according to the United States Department of Agriculture Soil Conservation Service Soil Classification System, may experience severe to very severe erosion.

(6) Forest land is land primarily useful for growing trees, including Christmas trees subject to the excise tax imposed under RCW 84.33.100 through 84.33.140, for commercial purposes, and that has long-term commercial significance for growing trees commercially.

(7) Frequently flooded areas are lands in the floodplain subject to a one percent or greater chance of flooding in any given year. These areas include, but are not limited to, streams, rivers, lakes, coastal areas, wetlands, and the like.

(8) Geologically hazardous areas are areas that because of their susceptibility to erosion, sliding, earthquake, or other geological events, are not suited to siting commercial, residential, or industrial development consistent with public health or safety concerns.

(9) Habitats of local importance include, a seasonal range or habitat element with which a given species has a primary association, and which, if altered, may reduce the likelihood that the species will maintain and reproduce over the long-term. These might include areas of high relative density or species richness, breeding habitat, winter range, and movement corridors. These might also include habitats that are of limited availability or high vulnerability to alteration, such as cliffs, talus, and wetlands.

(10) Landslide hazard areas are areas potentially subject to risk of mass movement due to a combination of geologic, topographic, and hydrologic factors.

(11) Long-term commercial significance includes the growing capacity, productivity, and soil composition of the land for long-term commercial production, in consideration with the land's proximity to population areas, and the possibility of more intense uses of land.

(12) Minerals include gravel, sand, and valuable metallic substances.

(13) Mine hazard areas are those areas directly underlain by, adjacent to, or affected by mine workings such as adits, tunnels, drifts, or air shafts.

(14) Mineral resource lands means lands primarily devoted to the extraction of minerals or that have known or potential long-term commercial significance for the extraction of minerals.

(15) Natural resource lands means agricultural, forest and mineral resource lands which have long-term commercial significance.

(16) Public facilities include streets, roads, highways, sidewalks, street and road lighting systems, traffic signals, domestic water systems, storm and sanitary sewer systems, parks and recreational facilities, and schools.

(17) Public services include fire protection and suppression, law enforcement, public health, education, recreation, environmental protection, and other governmental services.

(18) Seismic hazard areas are areas subject to severe risk of damage as a result of earthquake induced ground shaking, slope failure, settlement, or soil liquefaction.

(19) Species of local importance are those species that are of local concern due to their population status or their sensitivity to habitat manipulation or that are game species.

(20) Urban growth refers to growth that makes intensive use of land for the location of buildings, structures, and impermeable surfaces to such a degree as to be incompatible with the primary use of such land for the production of food, other agricultural products, or fiber, or the extraction of mineral resources. When allowed to spread over wide areas, urban growth typically requires urban governmental services. "Characterized by urban growth" refers to land having urban growth located on it, or to land located in relationship to an area with urban growth on it as to be appropriate for urban growth.

(21) Volcanic hazard areas shall include areas subject to pyroclastic flows, lava flows, and inundation by debris flows, mudflows, or related flooding resulting from volcanic activity.

(22) Wetland or wetlands means areas that are inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from nonwetland sites, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities. However, wetlands may include those artificial wetlands intentionally created from nonwetland areas created to mitigate conversion of wetlands, if permitted by the county or city.

[Statutory Authority: RCW 36.70A.050. 91-07-041, § 365-190-030, filed 3/15/91, effective 4/15/91.]

PART THREE
GUIDELINES

WAC 365-190-040 Process. The classification and designation of natural resource lands and critical areas is an important step among several in the overall growth management process. Together these steps comprise a vision of the future, and that vision gives direction to the steps in the form of specific goals and objectives. Under the Growth Management Act, the timing of the first steps coincides with development of the larger vision through the comprehensive planning process. People are asked to take the first steps, designation and classification of natural resource lands and critical areas, before the goals, objectives, and implementing policies of the comprehensive plan are finalized. Jurisdictions planning under the Growth Management Act must also adopt interim regulations for the conservation of natural resource lands and protection of critical areas. In this way, the classification and designation help give shape to the content of the plan, and at the same time natural resource lands are conserved and critical areas are protected from incompatible development while the plan is in process.

Under the Growth Management Act, preliminary classifications and designations will be completed in 1991. Those planning under the act must also enact interim regulations to protect and conserve these lands by September 1, 1991. By

July 1, 1992, counties and cities not planning under the act must bring their regulations into conformance with their comprehensive plans. By July 1, 1993, counties and cities planning under the act must adopt comprehensive plans, consistent with the goals of the act. Implementation of the plans will occur by the following year.

(1) Classification is the first step in implementing RCW 36.70A.050. It means defining categories to which natural resource lands and critical areas will be assigned.

Pursuant to RCW 36.70A.170, natural resource lands and critical areas will be designated based on the defined classifications. Designation establishes, for planning purposes: The classification scheme; the general distribution, location, and extent of the uses of land, where appropriate, for agriculture, forestry, and mineral extraction; and the general distribution, location, and extent of critical areas. Inventories and maps can indicate designations of natural resource lands. In the circumstances where critical areas (e.g., aquifer recharge areas, wetlands, significant wildlife habitat, etc.) cannot be readily identified, these areas should be designated by performance standards or definitions, so they can be specifically identified during the processing of a permit or development authorization. Designation means, at least, formal adoption of a policy statement, and may include further legislative action. Designating inventoried lands for comprehensive planning and policy definition may be less precise than subsequent regulation of specific parcels for conservation and protection.

Classifying, inventorying, and designating lands or areas does not imply a change in a landowner's right to use his or her land under current law. Land uses are regulated on a parcel basis and innovative land use management techniques should be applied when counties and cities adopt regulations to conserve and protect designated natural resource lands and critical areas. The department of community development will provide technical assistance to counties and cities on a wide array of regulatory options and alternative land use management techniques.

These guidelines may result in critical area designations that overlay other critical area or natural resource land classifications. That is, if two or more critical area designations apply to a given parcel, or portion of a given parcel, both or all designations apply. For counties and cities required or opting to plan under chapter 36.70A RCW, reconciling these multiple designations will be the subject of local development regulations adopted pursuant to RCW 36.70A.060.

(2) Counties and cities shall involve the public in classifying and designating natural resource lands and critical areas.

(a) Public participation:

(i) Public participation should include at a minimum: Landowners; representatives of agriculture, forestry, mining, business, environmental, and community groups; tribal governments; representatives of adjacent counties and cities; and state agencies. The public participation program should include early and timely public notice of pending designations and regulations.

(ii) Counties and cities should consider using: Technical and citizen advisory committees with broad representation, press releases, news conferences, neighborhood meetings, paid advertising (e.g., newspaper, radio, T.V., transit), newsletters, and other means beyond the required normal legal advertising and public notices. Plain, understandable language should be used. The department of community development will provide technical assistance in preparing public participation plans, including: A pamphlet series, workshops, and a list of agencies available to provide help.

(b) Adoption process. Statutory and local processes already in place governing land use decisions are the minimum processes required for designation and regulation pursuant to RCW 36.70A.060 and 36.70A.170. At least these steps should be included in the process:

(i) Accept the requirements of chapter 36.70A RCW, especially definitions of agricultural lands, forest lands, minerals, long-term commercial significance, critical areas, geologically hazardous areas, and wetlands as mandatory minimums.

(ii) Consider minimum guidelines developed by department of community development under RCW 36.70A.050.

(iii) Consider other definitions used by state and federal regulatory agencies.

(iv) Consider definitions used by the county and city and other counties and cities.

(v) Determine recommended definitions and check conformance with minimum definitions of chapter 36.70A RCW.

(vi) Adopt definitions, classifications, and standards.

(vii) Apply definitions to the land by mapping designated natural resource lands.

(viii) Establish designation amendment procedures.

(c) Intergovernmental coordination. The Growth Management Act requires coordination among communities and jurisdictions to reconcile conflicts and strive for consistent definitions, standards, and designations within regions. The minimum coordination process required under these guidelines may take one of two forms:

(i) Adjacent cities (or those with overlapping or adjacent planning areas); counties and the cities within them; and adjacent counties would provide each other and all adjacent special purpose districts and special purpose districts within them notice of their intent to classify and designate natural resource lands and critical areas within their jurisdiction. Counties or cities receiving notice may provide comments and input to the notifying jurisdiction. The notifying jurisdiction specifies a comment period prior to adoption. Within forty-five days of the jurisdiction's date of adoption of classifications or designations, affected jurisdictions are supplied a copy of the proposal. The department of community development may provide mediation services to counties and cities to help resolve disputed classifications or designations.

(ii) Adjacent jurisdictions; all the cities within a county; or all the cities and several counties may choose to cooperatively classify and designate natural resource lands and critical areas within their jurisdictions. Counties and cities by interlocal agreement would identify the definitions, classification, designation, and process that will be used to classify and designate lands within their areas. State and federal agencies or tribes may participate in the interlocal agreement or be provided a method of commenting on designations and classifications prior to adoption by jurisdictions.

Counties and/or cities may begin with the notification option ((c)(i) of this subsection) and choose to change to the interlocal agreement method ((c)(ii) of this subsection) prior to completion of the classification and designations within their jurisdictions. Approaches to intergovernmental coordination may vary between natural resource land and critical area designation. It is intended that state and federal agencies with land ownership or management responsibilities, special purpose districts, and Indian tribes with interests within the jurisdictions adopting classification and designation be consulted and their input considered in the development and adoption of designations and classifications. The department of community development may provide mediation services to help resolve disputes between counties and cities that are using either the notification or interlocal agreement method of coordinating between jurisdictions.

(d) Mapping. Mapping should be done to identify designated natural resource lands and to identify known critical areas. Counties and cities should clearly articulate that the maps are for information or illustrative purposes only unless the map is an integral component of a regulatory scheme.

Although there is no specific requirement for inventorying or mapping either natural resource lands or critical areas, chapter 36.70A RCW requires that counties and cities planning under chapter 36.70A RCW adopt development regulations for uses adjacent to natural resource lands. Logically, the only way to regulate adjacent lands is to know where the protected lands are. Therefore, mapping natural resource lands is a practical way to make regulation effective.

For critical areas, performance standards are preferred, as any attempt to map wetlands, for example, will be too inexact for regulatory purposes. Standards will be applied upon land use application. Even so, mapping critical areas for information but not regulatory purposes, is advisable.

(e) Reporting. Chapter 36.70A RCW requires that counties and cities annually report their progress to department of community development. Department of community development will maintain a central file including examples of successful public involvement programs, interjurisdictional coordination, definitions, maps, and other materials. This file will serve as an information source for counties and cities and a planning library for state agencies and citizens.

(f) Evaluation. When counties and cities adopt a comprehensive plan, chapter 36.70A RCW requires that they evaluate their designations and development regulations to assure they are consistent with and implement the comprehensive plan. When considering changes to the designations or development regulations, counties and cities should seek interjurisdictional coordination and public participation.

(g) Designation amendment process. Land use planning is a dynamic process. Procedures for designation should provide a rational and predictable basis for accommodating change.

Land use designations must provide landowners and public service providers with the information necessary to make decisions. This includes: Determining when and where growth will occur, what services are and will be available, how they might be financed, and what type and level of land use is reasonable and/or appropriate. Resource managers need to know where and when conversions of rural land might occur in response to growth pressures and how those changes will affect resource management.

Designation changes should be based on consistency with one or more of the following criteria:

(i) Change in circumstances pertaining to the comprehensive plan or public policy.

(ii) A change in circumstances beyond the control of the landowner pertaining to the subject property.

(iii) An error in designation.

(iv) New information on natural resource land or critical area status.

(h) Use of innovative land use management techniques. Resource uses have preferred and primary status in designated natural resource lands of long-term commercial significance. Counties and cities must determine if and to what extent other uses will be allowed. If other uses are allowed, counties and cities should consider using innovative land management techniques which minimize land use incompatibilities and most effectively maintain current and future natural resource lands.

Techniques to conserve and protect agricultural, forest lands, and mineral resource lands of long-term commercial significance include the purchase or transfer of development rights, fee simple purchase of the land, less than fee simple purchase, purchase with leaseback, buffering, land trades, conservation easements or other innovations which maintain current uses and assure the conservation of these natural resource lands.

Development in and adjacent to agricultural and forest lands of long-term commercial significance shall assure the continued management of these lands for their long-term commercial uses. Counties and cities should consider the adoption of right-to-farm provisions. Covenants or easements that recognize that farming and forest activities will occur should be imposed on new development in or adjacent to agricultural or forest lands. Where buffering is used it should be on land within the development unless an alternative is mutually agreed on by adjacent landowners.

Counties and cities planning under the act should define a strategy for conserving natural resource lands and for protecting critical areas, and this strategy should integrate the use of innovative regulatory and nonregulatory techniques.

[Statutory Authority: RCW 36.70A.050. 91-07-041, § 365-190-040, filed 3/15/91, effective 4/15/91.]

WAC 365-190-050 Agricultural lands. (1) In classifying agricultural lands of long-term significance for the production of food or other agricultural products, counties and cities shall use the land-capability classification system of the United States Department of Agriculture Soil Conservation Service as defined in Agriculture Handbook No. 210. These eight classes are incorporated by the United States Department of Agriculture into map units described in published soil surveys. These categories incorporate consideration of the growing capacity, productivity and soil composition of the land. Counties and cities shall also consider the combined effects of proximity to population areas and the possibility of more intense uses of the land as indicated by:

(a) The availability of public facilities;

(b) Tax status;

(c) The availability of public services;

(d) Relationship or proximity to urban growth areas;

(e) Predominant parcel size;

(f) Land use settlement patterns and their compatibility with agricultural practices;

(g) Intensity of nearby land uses;

(h) History of land development permits issued nearby;

(i) Land values under alternative uses; and

(j) Proximity of markets.

(2) In defining categories of agricultural lands of long-term commercial significance for agricultural production, counties and cities should consider using the classification of prime and unique farmland soils as mapped by the Soil Conservation Service. If a county or city chooses to not use these categories, the rationale for that decision must be included in its next annual report to department of community development.

(3) Counties and cities may further classify additional agricultural lands of local importance. Classifying additional agricultural lands of local importance should include consultation with the board of the local conservation district and the local agriculture stabilization and conservation service committee.

These additional lands may also include bogs used to grow cranberries. Where these lands are also designated critical areas, counties and cities planning under the act must weigh the compatibility of adjacent land uses and development with the continuing need to protect the functions and values of critical areas and ecosystems.

[Statutory Authority: RCW 36.70A.050. 91-07-041, § 365-190-050, filed 3/15/91, effective 4/15/91.]

WAC 365-190-060 Forest land resources. In classifying forest land, counties and cities should use the private forest land grades of the department of revenue (WAC 458-40-530). This system incorporates consideration of growing capacity, productivity and soil composition of the land. Forest land of long-term commercial significance will generally have a predominance of the higher private forest land grades. However, the presence of lower private forest land grades within the areas of predominantly higher grades need not preclude designation as forest land.

Each county and city shall determine which land grade constitutes forest land of long-term commercial significance, based on local and regional physical, biological, economic, and land use considerations.

Counties and cities shall also consider the effects of proximity to population areas and the possibility of more intense uses of the land as indicated by:

(1) The availability of public services and facilities conducive to the conversion of forest land.

(2) The proximity of forest land to urban and suburban areas and rural settlements: Forest lands of long-term commercial significance are located outside the urban and suburban areas and rural settlements.

(3) The size of the parcels: Forest lands consist of predominantly large parcels.

(4) The compatibility and intensity of adjacent and nearby land use and settlement patterns with forest lands of long-term commercial significance.

(5) Property tax classification: Property is assessed as open space or forest land pursuant to chapter 84.33 or 84.34 RCW.

(6) Local economic conditions which affect the ability to manage timberlands for long-term commercial production.

(7) History of land development permits issued nearby.

[Statutory Authority: RCW 36.70A.050. 91-07-041, § 365-190-060, filed 3/15/91, effective 4/15/91.]

WAC 365-190-070 Mineral resource lands. (1) Counties and cities shall identify and classify aggregate and mineral resource lands from which the extraction of minerals occurs or can be anticipated. Other proposed land uses within these areas may require special attention to ensure future supply of aggregate and mineral resource material, while maintaining a balance of land uses.

(2) Classification criteria. Areas shall be classified as mineral resource lands based on geologic, environmental, and economic factors, existing land uses, and land ownership. The areas to be studied and their order of study shall be specified by counties and cities.

(a) Counties and cities should classify lands with long-term commercial significance for extracting at least the following minerals: Sand, gravel, and valuable metallic substances. Other minerals may be classified as appropriate.

(b) In classifying these areas, counties and cities should consider maps and information on location and extent of mineral deposits provided by the Washington state department of natural resources and the United States Bureau of Mines. Additionally, the department of natural resources has a detailed minerals classification system counties and cities may choose to use.

(c) Counties and cities should consider classifying known and potential mineral deposits so that access to mineral resources of long-term commercial significance is not knowingly precluded.

(d) In classifying mineral resource lands, counties and cities shall also consider the effects of proximity to population areas and the possibility of more intense uses of the land as indicated by:

(i) General land use patterns in the area;

(ii) Availability of utilities;

(iii) Availability and adequacy of water supply;

(iv) Surrounding parcel sizes and surrounding uses;

(v) Availability of public roads and other public services;

(vi) Subdivision or zoning for urban or small lots;

(vii) Accessibility and proximity to the point of use or market;

(viii) Physical and topographic characteristics of the mineral resource site;

(ix) Depth of the resource;

(x) Depth of the overburden;

(xi) Physical properties of the resource including quality and type;

(xii) Life of the resource; and

(xiii) Resource availability in the region.

[Statutory Authority: RCW 36.70A.050. 91-07-041, § 365-190-070, filed 3/15/91, effective 4/15/91.]

WAC 365-190-080 Critical areas. (1) Wetlands. The wetlands of Washington state are fragile ecosystems which serve a number of important beneficial functions. Wetlands assist in the reduction of erosion, siltation, flooding, ground and surface water pollution, and provide wildlife, plant, and fisheries habitats. Wetlands destruction or impairment may result in increased public and private costs or property losses.

In designating wetlands for regulatory purposes, counties and cities shall use the definition of wetlands in RCW 36.70A.030(22). Counties and cities are requested and encouraged to make their actions consistent with the intent and goals of "protection of wetlands," Executive Orders 89-10 and 90-04 as they exist on September 1, 1990. Additionally, counties and cities should consider wetlands protection guidance provided by the department of ecology including the model wetlands protection ordinance.

(a) Counties and cities that do not now rate wetlands shall consider a wetlands rating system to reflect the relative function, value and uniqueness of wetlands in their jurisdictions. In developing wetlands rating systems, counties and cities should consider the following:

(i) The Washington state four-tier wetlands rating system;

(ii) Wetlands functions and values;

(iii) Degree of sensitivity to disturbance;

(iv) Rarity; and

(v) Ability to compensate for destruction or degradation.

If a county or city chooses to not use the state four-tier wetlands rating system, the rationale for that decision must be included in its next annual report to department of community development.

(b) Counties and cities may use the National Wetlands Inventory as an information source for determining the approximate distribution and extent of wetlands. This inventory provides maps of wetland areas according to the definition of wetlands issued by the United States Department of Interior - Fish and Wildlife Service, and its wetland boundaries should be delineated for regulation consistent with the wetlands definition in RCW 36.70A.030(22).

(c) Counties and cities should consider using the methodology in the Federal Manual for Identifying and Delineating Jurisdictional Wetlands, cooperatively produced by the United States Army Corps of Engineers, United States Environmental Protection Agency, United States Department of Agriculture Soil Conservation Service, and United States Fish and Wildlife Service, that was issued in January 1989, and regulatory guidance letter 90-7 issued by the United States Corps of Engineers on November 29, 1990, for regulatory delineations.

(2) Aquifer recharge areas. Potable water is an essential life sustaining element. Much of Washington's drinking water comes from ground water supplies. Once ground water is contaminated it is difficult, costly, and sometimes impossible to clean up. Preventing contamination is necessary to avoid exorbitant costs, hardships, and potential physical harm to people.

The quality of ground water in an aquifer is inextricably linked to its recharge area. Few studies have been done on aquifers and their recharge areas in Washington state. In the cases in which aquifers and their recharge areas have been studied, affected counties and cities should use this information as the base for classifying and designating these areas.

Where no specific studies have been done, counties and cities may use existing soil and surficial geologic information to determine where recharge areas are. To determine the threat to ground water quality, existing land use activities and their potential to lead to contamination should be evaluated.

Counties and cities shall classify recharge areas for aquifers according to the vulnerability of the aquifer. Vulnerability is the combined effect of hydrogeological susceptibility to contamination and the contamination loading potential. High vulnerability is indicated by land uses that contribute contamination that may degrade ground water, and hydrogeologic conditions that facilitate degradation. Low vulnerability is indicated by land uses that do not contribute contaminants that will degrade ground water, and by hydrogeologic conditions that do not facilitate degradation.

(a) To characterize hydrogeologic susceptibility of the recharge area to contamination, counties and cities may consider the following physical characteristics:

(i) Depth to ground water;

(ii) Aquifer properties such as hydraulic conductivity and gradients;

(iii) Soil (texture, permeability, and contaminant attenuation properties);

(iv) Characteristics of the vadose zone including permeability and attenuation properties; and

(v) Other relevant factors.

(b) The following may be considered to evaluate the contaminant loading potential:

(i) General land use;

(ii) Waste disposal sites;

(iii) Agriculture activities;

(iv) Well logs and water quality test results; and

(v) Other information about the potential for contamination.

(c) Classification strategy for recharge areas should be to maintain the quality of the ground water, with particular attention to recharge areas of high susceptibility. In recharge areas that are highly vulnerable, studies should be initiated to determine if ground water contamination has occurred. Classification of these areas should include consideration of the degree to which the aquifer is used as a potable water source, feasibility of protective measures to preclude further degradation, availability of treatment measures to maintain potability, and availability of alternative potable water sources.

(d) Examples of areas with a critical recharging effect on aquifers used for potable water, may include:

(i) Sole source aquifer recharge areas designated pursuant to the Federal Safe Drinking Water Act.

(ii) Areas established for special protection pursuant to a ground water management program, chapters 90.44, 90.48, and 90.54 RCW, and chapters 173-100 and 173-200 WAC.

(iii) Areas designated for wellhead protection pursuant to the Federal Safe Drinking Water Act.

(iv) Other areas meeting the definition of "areas with a critical recharging effect on aquifers used for potable water" in these guidelines.

(3) Frequently flooded areas. Floodplains and other areas subject to flooding perform important hydrologic functions

and may present a risk to persons and property. Classifications of frequently flooded areas should include, at a minimum, the 100-year floodplain designations of the Federal Emergency Management Agency and the National Flood Insurance Program.

Counties and cities should consider the following when designating and classifying frequently flooded areas:

(a) Effects of flooding on human health and safety, and to public facilities and services;

(b) Available documentation including federal, state, and local laws, regulations, and programs, local studies and maps, and federal flood insurance programs;

(c) The future flow floodplain, defined as the channel of the stream and that portion of the adjoining floodplain that is necessary to contain and discharge the base flood flow at build out without any measurable increase in flood heights;

(d) The potential effects of tsunami, high tides with strong winds, sea level rise resulting from global climate change, and greater surface runoff caused by increasing impervious surfaces.

(4) Geologically hazardous areas.

(a) Geologically hazardous areas include areas susceptible to erosion, sliding, earthquake, or other geological events. They pose a threat to the health and safety of citizens when incompatible commercial, residential, or industrial development is sited in areas of significant hazard. Some geological hazards can be reduced or mitigated by engineering, design, or modified construction or mining practices so that risks to health and safety are acceptable. When technology cannot reduce risks to acceptable levels, building in geologically hazardous areas is best avoided. This distinction should be considered by counties and cities that do not now classify geological hazards as they develop their classification scheme.

(a) Areas that are susceptible to one or more of the following types of hazards shall be classified as a geologically hazardous area:

(i) Erosion hazard;

(ii) Landslide hazard;

(iii) Seismic hazard; or

(iv) Areas subject to other geological events such as coal mine hazards and volcanic hazards including: Mass wasting, debris flows, rockfalls, and differential settlement.

(b) Counties and cities should classify geologically hazardous area as either:

(i) Known or suspected risk;

(ii) No risk;

(iii) Risk unknown - data are not available to determine the presence or absence of a geological hazard.

(c) Erosion hazard areas are at least those areas identified by the United States Department of Agriculture Soil Conservation Service as having a "severe" rill and inter-rill erosion hazard.

(d) Landslide hazard areas shall include areas potentially subject to landslides based on a combination of geologic, topographic, and hydrologic factors. They include any areas susceptible because of any combination of bedrock, soil, slope (gradient), slope aspect, structure, hydrology, or other factors. Example of these may include, but are not limited to the following:

(i) Areas of historic failures, such as:

(A) Those areas delineated by the United States Department of Agriculture Soil Conservation Service as having a "severe" limitation for building site development;

(B) Those areas mapped as class u (unstable), uos (unstable old slides), and urs (unstable recent slides) in the department of ecology coastal zone atlas; or

(C) Areas designated as quaternary slumps, earthflows, mudflows, lahars, or landslides on maps published as the United States Geological Survey or department of natural resources division of geology and earth resources.

(ii) Areas with all three of the following characteristics:

(A) Slopes steeper than fifteen percent; and

(B) Hillsides intersecting geologic contacts with a relatively permeable sediment overlying a relatively impermeable sediment or bedrock; and

(C) Springs or ground water seepage;

(iii) Areas that have shown movement during the holocene epoch (from ten thousand years ago to the present) or which are underlain or covered by mass wastage debris of that epoch;

(iv) Slopes that are parallel or subparallel to planes of weakness (such as bedding planes, joint systems, and fault planes) in subsurface materials;

(v) Slopes having gradients steeper than eighty percent subject to rockfall during seismic shaking;

(vi) Areas potentially unstable as a result of rapid stream incision, stream bank erosion, and undercutting by wave action;

(vii) Areas that show evidence of, or are at risk from snow avalanches;

(viii) Areas located in a canyon or on an active alluvial fan, presently or potentially subject to inundation by debris flows or catastrophic flooding;

(ix) Any area with a slope of forty percent or steeper and with a vertical relief of ten or more feet except areas composed of consolidated rock. A slope is delineated by establishing its toe and top and measured by averaging the inclination over at least ten feet of vertical relief.

(e) Seismic hazard areas shall include areas subject to severe risk of damage as a result of earthquake induced ground shaking, slope failure, settlement, soil liquefaction, or surface faulting. One indicator of potential for future earthquake damage is a record of earthquake damage in the past. Ground shaking is the primary cause of earthquake damage in Washington. The strength of ground shaking is primarily affected by:

(i) The magnitude of an earthquake;

(ii) The distance from the source of an earthquake;

(iii) The type of thickness of geologic materials at the surface; and

(iv) The type of subsurface geologic structure.

Settlement and soil liquefaction conditions occur in areas underlain by cohesionless soils of low density, typically in association with a shallow ground water table.

(f) Other geological events:

(i) Volcanic hazard areas shall include areas subject to pyroclastic flows, lava flows, debris avalanche, inundation by debris flows, mudflows, or related flooding resulting from volcanic activity.

(ii) Mine hazard areas are those areas underlain by, adjacent to, or affected by mine workings such as adits, gangways, tunnels, drifts, or air shafts. Factors which should be considered include: Proximity to development, depth from ground surface to the mine working, and geologic material.

(5) Fish and wildlife habitat conservation areas. Fish and wildlife habitat conservation means land management for maintaining species in suitable habitats within their natural geographic distribution so that isolated subpopulations are not created. This does not mean maintaining all individuals of all species at all times, but it does mean cooperative and coordinated land use planning is critically important among counties and cities in a region. In some cases, intergovernmental cooperation and coordination may show that it is sufficient to assure that a species will usually be found in certain regions across the state.

(a) Fish and wildlife habitat conservation areas include:

(i) Areas with which endangered, threatened, and sensitive species have a primary association;

(ii) Habitats and species of local importance;

(iii) Commercial and recreational shellfish areas;

(iv) Kelp and eelgrass beds; herring and smelt spawning areas;

(v) Naturally occurring ponds under twenty acres and their submerged aquatic beds that provide fish or wildlife habitat;

(vi) Waters of the state;

(vii) Lakes, ponds, streams, and rivers planted with game fish by a governmental or tribal entity; or

(viii) State natural area preserves and natural resource conservation areas.

(b) Counties and cities may consider the following when classifying and designating these areas:

(i) Creating a system of fish and wildlife habitat with connections between larger habitat blocks and open spaces;

(ii) Level of human activity in such areas including presence of roads and level of recreation type (passive or active recreation may be appropriate for certain areas and habitats);

(iii) Protecting riparian ecosystems;

(iv) Evaluating land uses surrounding ponds and fish and wildlife habitat areas that may negatively impact these areas;

(v) Establishing buffer zones around these areas to separate incompatible uses from the habitat areas; and

(vi) Restoring of lost salmonid habitat.

(c) Sources and methods

(i) Counties and cities should classify seasonal ranges and habitat elements with which federal and state listed endangered, threatened and sensitive species have a primary association and which, if altered, may reduce the likelihood that the species will maintain and reproduce over the long term.

(ii) Counties and cities should determine which habitats and species are of local importance. Habitats and species may be further classified in terms of their relative importance.

Counties and cities may use information prepared by the Washington department of wildlife to classify and designate locally important habitats and species. Priority habitats and priority species are being identified by the department of wildlife for all lands in Washington state. While these priorities are those of the department, they and the data on which they are based may be considered by counties and cities.

(iii) Shellfish areas. All public and private tidelands or bedlands suitable for shellfish harvest shall be classified as critical areas. Counties and cities should consider both commercial and recreational shellfish areas. Counties and cities should at least consider the Washington department of health classification of commercial and recreational shellfish growing areas to determine the existing condition of these areas. Further consideration should be given to the vulnerability of these areas to contamination. Shellfish protection districts established pursuant to chapter 90.72 RCW shall be included in the classification of critical shellfish areas.

(iv) Kelp and eelgrass beds; herring and smelt spawning areas. Counties and cities shall classify kelp and eelgrass beds, identified by department of natural resources aquatic lands division and the department of ecology. Though not an inclusive inventory, locations of kelp and eelgrass beds are compiled in the *Puget Sound Environmental Atlas, Volumes 1 and 2.* Herring and smelt spawning times and locations are outlined in WAC 220-110-240 through 220-110-260 and the *Puget Sound Environmental Atlas.*

(v) Naturally occurring ponds under twenty acres and their submerged aquatic beds that provide fish or wildlife habitat.

Naturally occurring ponds do not include ponds deliberately designed and created from dry sites, such as canals, detention facilities, wastewater treatment facilities, farmponds, temporary construction ponds (of less than three years duration) and landscape amenities. However, naturally occurring ponds may include those artificial ponds intentionally created from dry areas in order to mitigate conversion of ponds, if permitted by a regulatory authority.

(vi) Waters of the state. Waters of the state are defined in Title 222 WAC, the forest practices rules and regulations. Counties and cities should use the classification system established in WAC 222-16-030 to classify waters of the state.

Counties and cities may consider the following factors when classifying waters of the state as fish and wildlife habitats:

(A) Species present which are endangered, threatened or sensitive, and other species of concern;

(B) Species present which are sensitive to habitat manipulation;

(C) Historic presence of species of local concern;

(D) Existing surrounding land uses that are incompatible with salmonid habitat;

(E) Presence and size of riparian ecosystems;

(F) Existing water rights; and

(G) The intermittent nature of some of the higher classes of waters of the state.

(vii) Lakes, ponds, streams, and rivers planted with game fish.

This includes game fish planted in these water bodies under the auspices of a federal, state, local, or tribal program or which supports priority fish species as identified by the department of wildlife.

(viii) State natural area preserves and natural resource conservation areas. Natural area preserves and natural

resource conservation areas are defined, established, and managed by department of natural resources.

[Statutory Authority: RCW 36.70A.050. 91-07-041, § 365-190-080, filed 3/15/91, effective 4/15/91.]

Chapter 365-195 WAC

GROWTH MANAGEMENT ACT—PROCEDURAL CRITERIA FOR ADOPTING COMPREHENSIVE PLANS AND DEVELOPMENT REGULATIONS

WAC

PART ONE
GENERAL CONSIDERATIONS

WAC 365-195-010 Background. Through the Growth Management Act, the legislature provided a new framework for land use planning and the regulation of development in Washington state in response to challenges posed to the quality of life by rapid growth. Major features of this framework include:

(1) A requirement that counties with specified populations and rates of growth and the cities within them adopt comprehensive plans and development regulations under the act. Other counties can choose to be covered by this requirement, thereby including the cities they contain.

(2) A set of common goals to guide the development of comprehensive plans and development regulations.

(3) The concept that the process should be a "bottom up" effort, involving early and continuous public participation, with the central locus of decision-making at the local level.

(4) Requirements for the locally developed plans to be consistent internally, consistent with county-wide planning policies and consistent with the plans of other counties and cities where there are common borders or related regional issues.

(5) A requirement that development regulations adopted to implement the comprehensive plans be consistent with such plans.

(6) The principle that development and the providing of public facilities and services needed to support development should occur concurrently.

(7) A determination that planning and plan implementation actions should address difficult issues that have resisted resolution in the past, such as:

(a) The timely financing of needed infrastructure;

(b) Providing adequate and affordable housing for all economic segments of the population;

(c) Concentrating growth in urban areas, provided with adequate urban services;

(d) The siting of essential public facilities;

(e) The designation and conservation of agricultural, forest, and mineral resource lands;

(f) The designation and protection of environmentally critical areas.

(8) An intention that economic development be encouraged and fostered within the planning and regulatory scheme established for managing growth.

[Statutory Authority: RCW 36.70A.190 (4)(b). 92-23-065, § 365-195-010, filed 11/17/92, effective 12/18/92.]

WAC 365-195-020 Purpose. Within the framework established by the act, a wide diversity of local visions of the future can be accommodated. Moreover, there is no exclusive method for accomplishing the planning and development regulation requirements of the act. However, in light of the complexity and difficulty of the task, the legislature assigned the department of community development the function of establishing a program of technical assistance. As part of that program, the department is directed to adopt by rule procedural criteria to assist counties and cities in adopting comprehensive plans and development regulations that meet the goals and requirements of the act. The purpose of this chapter is to carry out that directive.

[Statutory Authority: RCW 36.70A.190 (4)(b). 92-23-065, § 365-195-020, filed 11/17/92, effective 12/18/92.]

WAC 365-195-030 Applicability. (1) This chapter makes recommendations for meeting the requirements of the act. The recommendations set forth are intended as a listing of possible choices, but compliance with the requirements of the act can be achieved without using all of the suggestions made here or by adopting other approaches.

(2) These criteria are not meant to represent a minimum list of actions which must be taken for comprehensive plans and development regulations to meet the goals and requirements of the act.

(3) The growth planning hearings boards are authorized to determine, in cases brought before them, whether comprehensive plans or development regulations are in compliance with the goals and requirements of the act. In making such determinations, the boards are required to consider the procedural criteria contained in this chapter. However, compliance with these criteria is not a prerequisite to a finding of compliance with the act.

(4) Nothing in this chapter is intended to affect planning decisions and actions made pursuant to the act before this chapter became effective, including but not limited to the adoption of county-wide planning policies.

(5) This chapter does not apply to jurisdictions not required to plan or not choosing to plan under RCW 36.70A.040.

[Statutory Authority: RCW 36.70A.190 (4)(b). 92-23-065, § 365-195-030, filed 11/17/92, effective 12/18/92.]

WAC 365-195-040 General method. (1) This chapter identifies the act's mandatory provisions for creating comprehensive plans and development regulations. These statutory mandates are listed under headings labeled "**requirements**." Courses of action the department recommends in order to comply with the act's mandates are set forth under headings labeled "**recommendations for meeting requirements**."

(2) Definitions and interpretations made in this chapter by the department, but not expressly set forth in the act, are identified as such. The department's purpose is to provide assistance in interpreting the act, not to add provisions and meanings beyond those intended by the legislature.

[Statutory Authority: RCW 36.70A.190 (4)(b). 92-23-065, § 365-195-040, filed 11/17/92, effective 12/18/92.]

WAC 365-195-050 Presumption of validity. Comprehensive plans and development regulations adopted under the act are presumed valid upon adoption. Nevertheless, jurisdictions whose plans are challenged will be obliged to furnish a record for the review process. Although the presumption of validity should discourage meritless appeals, if the presumption is overcome in any case, the county or city will be required to demonstrate compliance with the act. Such a demonstration will be aided by a record which documents deliberations, shows data relied upon, and explains how conclusions were reached.

[Statutory Authority: RCW 36.70A.190 (4)(b). 92-23-065, § 365-195-050, filed 11/17/92, effective 12/18/92.]

WAC 365-195-060 Regional and local variations. (1) Regional and local variations and the diversity that exist among different counties and cities are to be reflected in the use and application of these procedural criteria. Local jurisdictions are expected to use a pick and choose approach. Following these criteria is appropriate, in any case, only to the extent necessary to fairly meet the intent of the act in the particular situation.

(2) To a major extent, recognition of variations and diversity is implicit in the framework of the act itself, with its emphasis on a "bottom up" planning process and on public participation. Such recognition is also inherent in the listing of goals without assignment of priority. Accordingly, this chapter seeks to accommodate regional and local differences by focusing on an analytical process, instead of on specific outcomes.

(3) Local plans and development regulations are expected to vary in complexity and in level of detail provided in the supporting record, depending on population size, growth rates, resources available for planning and scale of public facilities, and services provided.

(4) In general, smaller jurisdictions will not be expected to engage in extensive original research, but will be able to rely upon reasonable assumptions derived from available data of a statewide or regional nature or representative of jurisdictions of comparable size and growth rates.

(5) In commenting on plans and regulations proposed for adoption, state agencies including the department should

be guided by a common-sense appreciation of the size of the jurisdiction involved and the magnitude of the problems addressed. It is anticipated that the growth planning hearings boards will be informed by the same awareness.

(6) The department has developed a model comprehensive plan for smaller jurisdictions which may be used to help guide local planning where local resources are limited.

[Statutory Authority: RCW 36.70A.190 (4)(b). 92-23-065, § 365-195-060, filed 11/17/92, effective 12/18/92.]

WAC 365-195-070 Interpretations. The following represent the department's interpretation of several critical concepts about which the express terms of the act are not clear. While not necessarily the only appropriate way to view the concepts involved, these interpretations appear to be supported by the overall statutory context.

(1) **Goals.** The act lists thirteen overall goals in RCW 36.70A.020. Comprehensive plans and development regulations are to be designed to meet these goals. The list of thirteen goals is not exclusive. Local governments may adopt additional goals. However, these additional goals must be supplementary. They may not conflict with the thirteen statutory goals. Comprehensive plans must show how each of the goals is to be pursued consistent with the planning entity's vision of its future. Differences in emphasis are expected from jurisdiction to jurisdiction. In some cases meeting certain of these goals may involve support for activities beyond jurisdictional boundaries. In most cases, if a comprehensive plan meets the statutory goals, development regulations consistent with the comprehensive plan will meet the goals.

(2) **Economic development.** The act lists economic development as one of the overall goals, but does not mandate an economic development element within comprehensive plans. This should not be read as a downgrading of the importance of economic development as a feature of the growth management planning and implementation process. Planning under the act in connection with all mandatory elements should be undertaken with the goal of economic development in mind. Whether the jurisdiction elects to develop a separate economic development element or not, desired levels of job growth, and of commercial and industrial expansion should be identified and supporting strategies should be integrated with the land use, housing, utilities transportation, and other features of the comprehensive plan.

(3) **Concurrency.** The achievement of concurrency should be sought with respect to public facilities in addition to transportation facilities. The list of such additional facilities should be locally defined. The department recommends that at least domestic water systems and sanitary sewer systems be added to concurrency lists applicable within urban growth areas, and that at least domestic water systems be added for lands outside urban growth areas. Concurrency describes the situation in which adequate facilities are available when the impacts of development occur, or within a specified time thereafter. With respect to facilities other than transportation facilities and water systems, local jurisdictions may fashion their own regulatory responses and are not limited to imposing moratoria on development during periods when concurrency is not maintained.

(4) **Essential public facilities.** The term "essential public facilities" is a specialized term applicable in the context of siting, and refers to facilities that are typically difficult to site. "Essential public facilities" do not necessarily include everything within the statutory definitions of "public facilities" and "public services," and should include additional items not listed in those definitions. Consistent with county-wide planning policies, local governments should create their own lists of "essential public facilities," guided by the examples set forth in RCW 36.70A.200, but not necessarily bound by those examples. For the purposes of identifying facilities to be subject to the "essential public facilities" siting process, it is not necessary that the facilities be publicly owned. If the services involved meet a locally accepted definition of public service, the supporting facilities for the services may be included on the list, regardless of ownership.

(5) **Urban growth areas.** The adoption of urban growth areas by counties should reflect a cooperative effort among jurisdictions to accomplish the requirements of the act on a regional basis. As growth occurs, most lands within urban growth areas should ultimately be provided with local urban services by cities, either directly or by contract. Other service providers are appropriate within urban growth areas for regional or county-wide services, or for isolated unincorporated pockets characterized by urban growth. Provisions should be made for the phasing of development within each urban growth area to ensure that services are provided as growth occurs. In proposing urban growth areas, cities should endeavor to accommodate projected urban growth through infill within existing municipal boundaries. But in some cases expansion will be logical. Interlocal agreements should be negotiated regarding land use management and the provision of services to such potential expansion areas so that such growth can occur in a manner consistent with the cities' comprehensive plans and development regulations.

(6) **Affordable housing.** This is a term which applies to the adequacy of housing stocks to fulfill the housing needs of all economic segments of the population. The underlying assumption is that the market place will guarantee adequate housing for those in the upper economic brackets but that some combination of appropriately zoned land, regulatory incentives, financial subsidies, and innovative planning techniques will be necessary to make adequate provisions for the needs of middle and lower income persons. Each jurisdiction should incorporate a regional perspective into the identification of its housing planning area, with the understanding that the population to be planned for is county-wide. All jurisdictions should share in the responsibility for achieving a reasonable and equitable distribution of affordable housing to meet the needs of middle and lower income persons. While government policies and programs alone cannot ensure that everyone is adequately housed, attention should be given to removing regulatory barriers to affordable housing where such action is otherwise consistent with the act. In the overall implementation of the act an effort should be made to avoid an escalation of costs which will defeat the achievement of the act's housing aims.

(7) **Consistency.** The act calls for "consistency" in a number of contexts. In general, the phrase "not incompatible with" conveys the meaning of "consistency" most suited to

preserving flexibility for local variations. An important example of the use of the term is the requirement that comprehensive plans be internally consistent. This requirement appears to mean that the parts of the plan must fit together so that no one feature precludes the achievement of any other. (E.g., the densities selected and the wetlands to be protected can both be achieved on the available land base.) A second significant example is the requirement that each comprehensive plan be consistent with other comprehensive plans of jurisdictions with common borders or related regional issues. Determining consistency in this interjurisdictional context is complicated by the differences in timing which will occur in the adoption of plans. Initially interjurisdictional consistency should be met by plans which are consistent with and carry out the relevant county-wide planning policies.

[Statutory Authority: RCW 36.70A.190 (4)(b). 92-23-065, § 365-195-070, filed 11/17/92, effective 12/18/92.]

PART TWO
DEFINITIONS

WAC 365-195-200 Statutory definitions. For the convenience of persons using these criteria the definitions contained in RCW 36.70A.030 are set forth below:

(1) "Adopt a comprehensive land use plan" means to enact a new comprehensive land use plan or to update an existing comprehensive land use plan.

(2) "Agricultural land" means land primarily devoted to the commercial production of horticultural, viticultural, floricultural, dairy, apiary, vegetable, or animal products or of berries, grain, hay, straw, turf, seed, Christmas trees not subject to the excise tax imposed by RCW 84.33.100 through 84.33.140, or livestock and that has long-term commercial significance for agricultural production.

(3) "City" means any city or town, including a code city.

(4) "Comprehensive land use plan," "comprehensive plan," or "plan" means a generalized coordinated land use policy statement of the governing body of a county or city that is adopted pursuant to this chapter.

(5) "Critical areas" include the following areas and ecosystems:

(a) Wetlands;

(b) Areas with a critical recharging effect on aquifers used for potable water;

(c) Fish and wildlife habitat conservation areas;

(d) Frequently flooded areas; and

(e) Geologically hazardous areas.

(6) "Department" means the department of community development.

(7) "Development regulations" means any controls placed on development or land use activities by a county or city, including, but not limited to, zoning ordinances, subdivision ordinances, and binding site plan ordinances.

(8) "Forest land" means land primarily useful for growing trees, including Christmas trees subject to the excise tax imposed under RCW 84.33.100 through 84.33.140, for commercial purposes, and that has long-term commercial significance for growing trees commercially.

(9) "Geologically hazardous areas" means areas that because of their susceptibility to erosion, sliding, earthquake, or other geological events, are not suited to the siting of commercial, residential, or industrial development consistent with public health or safety concerns.

(10) "Long-term commercial significance" includes the growing capacity, productivity, and soil composition of the land for long-term commercial production, in consideration with the land's proximity to population areas, and the possibility of more intense uses of the land.

(11) "Minerals" include gravel, sand, and valuable metallic substances.

(12) "Public facilities" include streets, roads, highways, sidewalks, street and road lighting systems, traffic signals, domestic water systems, storm and sanitary sewer systems, parks and recreational facilities, and schools.

(13) "Public services" include fire protection and suppression, law enforcement, public health, education, recreation, environmental protection, and other governmental services.

(14) "Urban growth" refers to growth that makes intensive use of land for the location of buildings, structures, and impermeable surfaces to such a degree as to be incompatible with the primary use of such land for the production of food, other agricultural products, or fiber, or the extraction of mineral resources. When allowed to spread over wide areas, urban growth typically requires urban governmental services. "Characterized by urban growth" refers to land having urban growth located on it, or to land located in relationship to an area with urban growth on it as to be appropriate for urban growth.

(15) "Urban growth area" means those areas designated by a county pursuant to RCW 36.70A.110.

(16) "Urban governmental services" include those governmental services historically and typically delivered by cities, and include storm and sanitary sewer systems, domestic water systems, street cleaning services, fire and police protection services, public transit services, and other public utilities associated with urban areas and normally not associated with nonurban areas.

(17) "Wetland" or "wetlands" means areas that are inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from nonwetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities. However, wetlands may include those artificial wetlands intentionally created from nonwetland areas created to mitigate conversion of wetlands, if permitted by the county or city.

[Statutory Authority: RCW 36.70A.190 (4)(b). 92-23-065, § 365-195-200, filed 11/17/92, effective 12/18/92.]

WAC 365-195-210 Definitions of terms as used in this chapter. The following are definitions of terms which are not defined in RCW 36.70A.030 but which are defined here for purposes of these procedural criteria. The department

recommends that counties and cities planning under the act adopt these definitions in their plans:

"Act" means the Growth Management Act as enacted in chapter 17, Laws of 1990 1st ex. sess., and chapter 32, Laws of 1991 sp. sess., state of Washington.

"Adequate public facilities" means facilities which have the capacity to serve development without decreasing levels of service below locally established minimums.

"Affordable housing" means residential housing that is rented or owned by a person or household whose monthly housing costs, including utilities other than telephone, do not exceed thirty percent of the household's monthly income.

"Available public facilities" means that facilities or services are in place or that a financial commitment is in place to provide the facilities or services within a specified time. In the case of transportation, the specified time is six years from the time of development.

"Concurrency" means that adequate public facilities are available when the impacts of development occur. This definition includes the two concepts or "adequate public facilities" and of "available public facilities" as defined above.

"Consistency" means that no feature of a plan or regulation is incompatible with any other feature of a plan or regulation. Consistency is indicative of a capacity for orderly integration or operation with other elements in a system.

"Coordination" means consultation and cooperation among jurisdictions.

"Contiguous development" means development of areas immediately adjacent to one another.

"Demand management strategies," or "transportation demand management strategies (TDM)" means strategies aimed at changing travel behavior rather than at expanding the transportation network to meet travel demand. Such strategies can include the promotion of work hour changes, ridesharing options, parking policies, telecommuting.

"Domestic water system" means any system providing a supply of potable water which is deemed adequate pursuant to RCW 19.27.097 for the intended use of a development.

"Financial commitment" means that sources of public or private funds or combinations thereof have been identified which will be sufficient to finance public facilities necessary to support development and that there is reasonable assurance that such funds will be timely put to that end.

"Growth Management Act" - see definition of "Act."

"Level of service" means an established minimum capacity of public facilities or services that must be provided per unit of demand or other appropriate measure of need.

"Master planned resort" means a self-contained and fully integrated planned unit development, in a setting of significant natural amenities, with primary focus on destination resort facilities consisting of short-term visitor accommodations associated with a range of developed on-site indoor or outdoor recreational facilities.

"New fully contained community" is a development proposed for location outside of the existing designated urban growth areas which is characterized by urban densities, uses, and services, and meets the criteria of RCW 36.70A.350.

"Planning period" means the twenty-year period following the adoption of a comprehensive plan or such longer period as may have been selected as the initial planning horizon by the planning jurisdiction.

"Public service obligations" means obligations imposed by law on utilities to furnish facilities and supply service to all who may apply for and be reasonably entitled to service.

"Regional transportation plan" means the transportation plan for the regionally designated transportation system which is produced by the regional transportation planning organization.

"Regional transportation planning organization (RTPO)" means the voluntary organization conforming to RCW 47.80.020, consisting of local governments within a region containing one or more counties which have common transportation interests.

"Rural lands" means all lands which are not within an urban growth area and are not designated as natural resource lands having long term commercial significance for production of agricultural products, timber, or the extraction of minerals.

"Sanitary sewer systems" means all facilities, including approved on-site disposal facilities, used in the collection, transmission, storage, treatment, or discharge of any waterborne waste, whether domestic in origin or a combination of domestic, commercial, or industrial waste.

"Solid waste handling facility" means any facility for the transfer or ultimate disposal of solid waste, including land fills and municipal incinerators.

"Transportation facilities" includes capital facilities related to air, water, or land transportation.

"Transportation level of service standards" means a measure which describes the operational condition of the travel stream and acceptable adequacy requirements. Such standards may be expressed in terms such as speed and travel time, freedom to maneuver, traffic interruptions, comfort, convenience, geographic accessibility, and safety.

"Transportation system management (TSM)" means the use of low capital expenditures to increase the capacity of the transportation system. TSM strategies include but are not limited to signalization, channelization, and bus turn-outs.

"Utilities" or "public utilities" means enterprises or facilities serving the public by means of an integrated system of collection, transmission, distribution, and processing facilities through more or less permanent physical connections between the plant of the serving entity and the premises of the customer. Included are systems for the delivery of natural gas, electricity, telecommunications services, and water, and for the disposal of sewage.

"Visioning" means a process of citizen involvement to determine values and ideals for the future of a community and to transform those values and ideals into manageable and feasible community goals.

[Statutory Authority: RCW 36.70A.190 (4)(b). 93-17-040, § 365-195-210, filed 8/11/93, effective 9/11/93; 92-23-065, § 365-195-210, filed 11/17/92, effective 12/18/92.]

WAC 365-195-220 Additional definitions to be adopted locally. In addition to adopting definitions of terms set forth in the preceding section, planning jurisdictions should consider developing local definitions of the following, to the extent such terms are used in local plans. The defini-

tions should in every case be consistent with county-wide planning policies:

"Development rights."

"Essential public facilities."

"Rural governmental services."

"Objectives, principles, and standards."

"Related regional issues."

[Statutory Authority: RCW 36.70A.190 (4)(b). 93-17-040, § 365-195-220, filed 8/11/93, effective 9/11/93; 92-23-065, § 365-195-220, filed 11/17/92, effective 12/18/92.]

PART THREE
FEATURES OF THE COMPREHENSIVE PLAN

WAC 365-195-300 Mandatory elements. (1) **Requirements**. The comprehensive plan shall consist of a map or maps and descriptive text covering objectives, principles, and standards used to develop the comprehensive plan. The plan shall be an internally consistent document and all elements shall be consistent with the future land use map.

(a) Each comprehensive plan shall include a plan, scheme, or design for each of the following:

(i) A land use element.

(ii) A housing element.

(iii) A capital facilities plan element.

(iv) A utilities element.

(v) A transportation element.

Counties shall also include a rural element including lands that are not designated for urban growth, agriculture, forest, or mineral resources.

(b) Additionally each plan shall contain a process for identifying and siting essential public facilities.

(2) **Recommendations for overall design.**

(a) The planning horizon for the comprehensive plan should be at least the twenty-year period following the adoption of the plan.

(b) Planning jurisdictions should consider including at the outset a separate section addressing the statutory goals and how the plan deals with each of them. This section should also identify any supplementary goals adopted.

(c) County-wide planning policies establish a county-wide framework from which county and city comprehensive plans are to be developed. How the applicable county-wide policies have been integrated into the plans should be made apparent.

(d) Each plan should contain a future land use map or maps, showing the proposed physical distribution and location of the various land uses during the planning period. This map should provide a graphic display of how and where development is expected to occur.

(e) The descriptive text covering objectives, principles, and standards used to develop the comprehensive plan will be expressive of the vision of the future of the planning entity. The text should articulate community values derived from the visioning and other citizen participation processes. The terms objectives, principles, and standards relate to methods chosen to meet planning goals or measurable steps on the path toward achieving such goals. The precise meaning of these terms should be locally defined.

(f) Jurisdictions are encouraged to include at the beginning of their comprehensive plans a section which summarizes, with graphics and a minimum of text, how the various pieces of the plan fit together. Plans may include overlay maps and other graphic displays depicting development patterns, phasing of development, neighborhoods or subarea definitions, and other plan features.

(g) A suggested detailed approach of how each element of the comprehensive plan may be prepared is provided through assistance manuals produced by the department.

[Statutory Authority: RCW 36.70A.190 (4)(b). 92-23-065, § 365-195-300, filed 11/17/92, effective 12/18/92.]

WAC 365-195-305 Land use element. (1) **Requirements**. This element shall contain at least the following features:

(a) Designation of the proposed general distribution and general location and extent of the uses of land, where appropriate, for agriculture, timber production, housing, commerce, industry, recreation, open spaces, public utilities, public facilities, and other land uses.

(b) Population densities, building intensities, and estimates of future population growth.

(c) Provisions for protection of the quality and quantity of ground water used for public water supplies.

(d) Where applicable, a review of drainage, flooding, and storm water runoff in the area covered by the plan and nearby jurisdictions, and guidance for corrective actions to mitigate or cleanse those discharges that pollute waters of the state, including Puget Sound or waters entering Puget Sound.

(2) **Recommendations for meeting requirements.** The following steps are recommended in preparing the land use element:

(a) Integration of relevant county-wide planning policies (and, where applicable, multicounty planning policies) into the local planning process.

(b) Identification of the existing general distribution and location of various land uses.

(c) Identification of the approximate acreage and general range of density or intensity of existing uses.

(d) Estimation using available data of the future population growth for the planning area and a projection of the level of commercial, industrial, and residential development likely to be experienced over at least the next twenty years.

(e) Selection of commercial, industrial, and residential densities sought to be achieved and their distribution for the purposes of accommodating the anticipated growth.

(f) Inventory of vacant, partially used and under-utilized land. Analysis of the extent to which existing buildings and housing, together with vacant, partially used and under-utilized land can support anticipated growth at the densities selected.

(g) Preparation of an implementation strategy for accomplishing the densities and distribution sought. To the extent that greater intensity of development is proposed, the strategy should include a description of the general range of physical forms contemplated for structures which will accommodate the new growth.

(h) Identification of the approximate spatial requirements for capital facilities (including transportation facilities)

and utilities needed to support the planned level of development.

(i) Generalized location and estimation of quantity of land needed for utility corridors, open space corridors, critical areas, and natural resource lands to be included within the planning area.

(j) Preparation of the future land use map on the basis of the total analysis performed.

(k) Reevaluation of this scheme in light of:

(i) The projected capacity for financing the needed capital facilities over the planning period; and

(ii) An assessment of whether the densities and distribution of growth contemplated can be achieved within the capacity of available land and water resources and without environmental degradation.

(l) Creation of a ground water protection strategy, integrating the relevant planning requirements of other statutes, consistent with the designation of areas with a critical recharging effect on aquifers used for potable water. Consideration should be given to the adoption of nondegradation as a ground water protection goal.

(m) Consultation with neighboring jurisdictions and state agencies to formulate a cooperative, integrated, watershed based approach to identified pollution problems caused by drainage, flooding, storm water runoff, failing septic systems, agricultural runoff, and other nonpoint sources, taking advantage of existing plans dealing with these subjects. To the extent that county-wide planning policies are relevant, they should followed in arriving at interjurisdictional solutions.

(n) A schedule for the phasing of the development contemplated consistent with the availability of capital facilities as provided in the capital facilities element.

[Statutory Authority: RCW 36.70A.190 (4)(b). 92-23-065, § 365-195-305, filed 11/17/92, effective 12/18/92.]

WAC 365-195-310 Housing element. (1) **Requirements**. This element shall contain at least the following features:

(a) An inventory and analysis of existing and projected housing needs.

(b) A statement of the goals, policies, and objectives for the preservation, improvement, and development of housing.

(c) Identification of sufficient land for housing, including, but not limited to, government-assisted housing, housing for low-income families, manufactured housing, multifamily housing, and group homes and foster care facilities.

(d) Adequate provisions for existing and projected housing needs of all economic segments of the community.

(2) **Recommendations for meeting requirements.** The following steps are recommended in preparing the housing element:

(a) Preparation of an inventory and analysis of the condition of existing housing stocks, using currently available data to the extent possible.

(b) An assessment of the needs for housing in the planning area, including both present needs and needs anticipated as a result of planned growth over the planning period.

(c) Evaluation of the extent to which the existing and projected market can provide housing at various costs and for various income levels.

(d) Estimation of the present and future extent of populations in the planning area which require assistance to obtain housing they can afford.

(e) Identification of existing programs and policies to promote adequate housing for population segments which cannot afford housing in the existing market and evaluation of their effectiveness.

(f) Incorporation of county-wide planning policies on affordable housing and parameters for the distribution of such housing. This should include identification of the share of affordable housing to be provided by the planning jurisdiction and how it will be achieved. In some cases, it may be appropriate for a jurisdiction to provide assistance for the location of affordable housing elsewhere.

(g) Planning jurisdictions should use the following ranges for various economic groupings in the planning area:

(i) Extremely low income - below thirty percent of median income.

(ii) Very low income - between thirty-one percent and fifty percent of median income.

(iii) Low income - between fifty-one percent and eighty percent of median income.

(iv) Moderate income - between eighty-one percent and ninety-five percent of median income.

(v) Middle income - between ninety-six percent and one hundred twenty percent of median income.

The parameters to be used in planning for affordable housing should be those adopted and annually adjusted for household size by the United States Department of Housing and Urban Development (HUD).

(h) Determination of housing goals, policies, and objectives in light of the needs identified. This process should include consideration of the locational needs of various types of housing in light of proximity to employment and of access to transportation and services.

(i) Identification of new programs and policies which can be instituted to promote adequate housing for all economic segments of the population.

(j) Preparation of a strategy for preserving, improving, and developing housing which will attempt to meet the needs identified for all economic segments of the population in the planning area. The strategy should include:

(i) Consideration of the range of housing choices to be encouraged, including but not limited to, multifamily housing, mixed uses, manufactured homes, accessory living units, and detached homes.

(ii) Consideration of various lot sizes and densities, and of clustering and other design configurations.

(iii) Identification of sufficient appropriately zoned land to accommodate the identified housing needs over the planning period.

(iv) Evaluation of the capacity of local public and private entities and the availability of financing to produce housing to the meet the identified need.

(k) Emphasis should be placed on adequately providing for group homes, foster care facilities, and facilities for other

special populations, while maintaining an equitable distribution of these facilities among neighboring jurisdictions.

(l) In developing the housing element attention should be directed to working with the desires of residents to preserve the character and vitality of existing neighborhoods, along with the rights of people to live in the neighborhood of their choice.

(m) The provisions of the housing element should be integrated with the provisions of the land use element.

(n) Provision for a program of ongoing review to monitor the performance of the housing strategy and for making adjustments and revisions as needed to achieve the goals, policies, and objectives. Such a program could include the collection and maintenance of information about the housing market, and where reasonably available from existing sources, data on the supply of developable residential building lots at various land-use densities and the supply of rental and for-sale housing at various price levels.

[Statutory Authority: RCW 36.70A.190 (4)(b). 92-23-065, § 365-195-310, filed 11/17/92, effective 12/18/92.]

WAC 365-195-315 Capital facilities element. (1) **Requirements.** This element shall contain at least the following features:

(a) An inventory of existing capital facilities owned by public entities, showing the locations and capacities of the capital facilities.

(b) A forecast of the future needs for such capital facilities.

(c) The proposed locations and capacities of expanded or new capital facilities.

(d) At least a six-year plan that will finance such capital facilities within projected funding capacities and clearly identifies sources of public money for such purposes.

(e) A requirement to reassess the land use element if probable funding falls short of meeting existing needs and to ensure that the land use element, capital facilities plan element, and financing plan within the capital facilities plan element are coordinated and consistent.

(2) **Recommendations for meeting requirements.** The capital facilities element should serve as a check on the practicality of achieving other elements of the plan. The following steps are recommended in preparing the capital facilities element:

(a) Inventory of existing capital facilities showing locations and capacities, including an inventory of the extent to which existing facilities possess presently unused capacity. Capital facilities involved should include water systems, sanitary sewer systems, storm water facilities, schools, parks and recreational facilities, police and fire protection facilities.

(b) The selection of levels of service or planning assumptions for the various facilities to apply during the planning period (twenty years or more) and which reflect community goals.

(c) A forecast of the future needs for such capital facilities based on the levels of service or planning assumptions selected and consistent with the growth, densities and distribution of growth anticipated in the land use element.

(d) The creation of a six-year capital facilities plan for financing capital facilities needed within that time frame. Projected funding capacities, are to be evaluated, followed by the identification of sources of public or private funds for which there is reasonable assurance of availability. The six-year plan should be updated at least biennially so that financial planning remains sufficiently ahead of the present for concurrency to be evaluated.

(e) The needs for capital facilities should be dictated by the phasing schedule set forth in the land use element.

(f) Provision should be made to reassess the land use element and other elements of the plan periodically in light of the evolving capital facilities plan. If the probable funding for capital facilities at any time is insufficient to meet existing needs, the land use element must be reassessed. At the same time funding possibilities and levels of service might also be reassessed. The plan should require that as a result of such reassessment, appropriate action must be taken to ensure the internal consistency of the land use and capital facilities portions of the plan. The plan should set forth how, if at all, pending applications for development will be affected while such a reassessment is being undertaken.

[Statutory Authority: RCW 36.70A.190 (4)(b). 92-23-065, § 365-195-315, filed 11/17/92, effective 12/18/92.]

WAC 365-195-320 Utilities element. (1) **Requirements.** This element shall contain at least the following features: The general location, proposed location, and capacity or all existing and proposed utilities, including, but not limited to, electrical lines, telecommunication lines, and natural gas lines.

(2) **Recommendations for meeting requirements.** The following steps are recommended in preparing the utilities element:

(a) Integration of the general location and capacity of existing and proposed utility facilities with the land use element of the plan. For the purposes of this step, proposed utilities are understood to be those awaiting approval when the comprehensive plan is adopted.

(b) An analysis of the capacity needs for various utilities over the planning period to serve the growth anticipated at the locations and densities proposed within the jurisdiction's planning area. The analysis of capacity needs should be developed in consultation with serving utilities, including consideration of comprehensive utility plans, least-cost plans, load forecasts, and other planning efforts.

(c) The general location of utility lines and facilities required to furnish anticipated capacity needs for the planning period within the jurisdiction's planning area. This should be developed in consultation with serving utilities as a part of the process of identifying lands useful for public purposes to be carried out by planning jurisdictions.

(d) Evaluation of whether any utilities should be identified and classified as essential public facilities, subject in cases of siting difficulty to the separate siting process established under the comprehensive plan for such facilities.

(e) Evaluation of whether any utilities within the planning area are subject to county-wide planning policies for siting public facilities of a county-wide or statewide nature and if so, the integration of those policies into the local plan for application as relevant.

(f) Creation of local criteria for siting utilities over the planning period, involving:

(i) Consideration of whether any siting proposal is consistent with the locations and densities for growth contemplated in the land use element.

(ii) Consideration of any public service obligations of the utility involved.

(iii) Evaluation of whether the siting decision will adversely affect the ability of the utility to provide service throughout its system.

(iv) Balancing of local design considerations against articulated needs for system-wide uniformity.

(g) Policies should be adopted which call for:

(i) Joint use of transportation rights of way and utility corridors, where possible.

(ii) Timely and effective notification of interested utilities of road construction, and of maintenance and upgrades of existing roads to facilitate coordination of public and private utility trenching activities.

(iii) Consideration of utility permits simultaneously with the proposals requesting service and, when possible, approval of utility permits when the project to be served is approved.

(h) Coordination among adjacent planning jurisdictions to ensure the consistency of each jurisdiction's utilities element and regional utility plans, and to develop a coordinated process for siting regional utility facilities in a timely manner.

[Statutory Authority: RCW 36.70A.190 (4)(b). 92-23-065, § 365-195-320, filed 11/17/92, effective 12/18/92.]

WAC 365-195-325 Transportation element. (1) **Requirements**. This element shall contain at least the following subelements:

(a) Land use assumptions used in estimating travel;

(b) Facilities and services needs, including:

(i) An inventory of air, water, and land transportation facilities and services, including transit alignments, to define existing capital facilities and travel levels as a basis for future planning;

(ii) Level of service standards for all arterials and transit routes to serve as a gauge to judge performance of the system. These standards should be regionally coordinated;

(iii) Specific actions and requirements for bringing into compliance any facilities or services that are below an established level of service standard;

(iv) Forecasts of traffic for at least ten years based on the adopted land use plan to provide information on the location, timing, and capacity needs of future growth;

(v) Identification of system expansion needs and transportation system management needs to meet current and future demands;

(c) Finance, including:

(i) An analysis of funding capability to judge needs against probable funding resources;

(ii) A multi-year financing plan based on the needs identified in the comprehensive plan, the appropriate parts of which shall serve as the basis for the six-year street, road, or transit program required by RCW 35.77.010 for cities, RCW 36.81.121 for counties, and RCW 35.58.2795 for public transportation systems;

(iii) If probable funding falls short of meeting identified needs, a discussion of how additional funding will be raised or how land use assumptions will be reassessed to ensure that level of service standards will be met;

(d) Intergovernmental coordination efforts, including an assessment of the impacts of the transportation plan and land use assumptions on the transportation systems of adjacent jurisdictions;

(e) Demand-management strategies.

(2) **Recommendations for meeting requirements**. The following steps are recommended in preparing the transportation element:

(a) Local and regional transportation goals and policies for the following transportation modes, where applicable:

(i) Roadways;

(ii) Transit: Fixed route and demand response;

(iii) Nonmotorized travel: Bicycle and pedestrian;

(iv) Port and intermodal facilities: Water, rail, air, and industrial;

(v) Rail: Passenger and freight;

(vi) Freight mobility: Truck, rail, and barge.

(b) A discussion of how the transportation element implements the land use element, how the transportation and land use elements are consistent, and how the transportation element is consistent with the regional transportation plan. Discussion concerning regional development strategies which promote the regional transportation plan and an efficient transportation system should be included.

(c) Inventories, incorporating the level of detail appropriate for the planning jurisdiction:

(i) Air transportation facilities inventory can include but not necessarily be limited to: A description of the services provided by the facilities and location of the air transportation facilities; a capacity analysis to compare current and projected airport needs; a capacity analysis of roads, rail, and navigational routes to assess freight and passenger access to airport facilities. Consideration of the current and projected surrounding land uses should be made with respect to uses that are compatible and available for projected airport needs.

(ii) Inventory of water transportation can include but not necessarily be limited to:

(A) A description of the ferry service, ownership, a map of the routes, the number of vessels, frequency of the service, passenger capacity, and vehicle capacity impacting the planning area; a capacity analysis of ferry service compared to current and projected needs. Consideration of the current and projected surrounding land use should be made with respect to uses that are compatible and available for current and projected ferry needs.

(B) A description of the port facilities, service and location of the facilities; an analysis of freight movement showing the proportion of freight which is moved by rail and by truck to determine access adequacy. Consideration of the current and projected surrounding land use should be made in terms of compatibility and availability for current and projected port needs.

(iii) Inventory of land transportation can include but not necessarily be limited to:

(A) A map of arterials and limited access facilities; a description of the general travel market (**i.e.**, commuter, tour-

ist, farm to market, etc.) served by the transportation network; traffic volumes, functional classification, ownership and physical and operational condition. Consideration of current and projected surrounding land use should be made with respect to uses that are compatible and available for current and projected transportation needs.

(B) A map of the rail lines and intermodal facilities; a description of ownership, condition, and identification of whether the rail lines are for passenger and/or freight movement. Consideration of current and projected surrounding land use should be made with respect to uses that are compatible and available for current and future projected land transportation needs.

(iv) Inventory of transit facilities and services within the planning area can include but not necessarily be limited to, a description of the service, service area, routes, major transfer centers, population base, passengers carried, number of vehicles including seating capacity, miles of route and vehicle hours within the local jurisdiction's boundaries. Analysis of projected transit needs should be made based on projected land use assumptions. For example, transit improvements should be planned in areas of projected residential and/or employment centers. Consideration of current and projected surrounding land use should be made with respect to uses that are compatible and available for current and projected transit needs.

(d) If the planning area is within a National Ambient Air Quality Standards nonattainment area, compliance with the Clean Air Act Amendments of l990 is required. The following should be included in the transportation element of the comprehensive plan as applicable to locally generated mobile sources of pollutants: A map of the area designated as the nonattainment area for ozone, carbon monoxide, and particulate matter (PM10); a discussion of the severity of the violation(s) contributed by transportation-related sources causing nonattainment and a description of measures that will be implemented consistent with the state implementation plan for air quality, in order to comply with the national standards for the air, land, water, and transit sections of the transportation element. Local jurisdictions should refer to local air quality agencies and metropolitan planning organizations for assistance.

(e) Provide a definition of the level of service (LOS) to be adopted for the transportation system that includes at least arterials and transit routes. The definition of level of service is not restricted to the traditional Highway Capacity Manual approach, but could include district, area-wide, corridor, or other nontraditional level of service standards. Provide an inventory of the current level of service of at least arterial and transit routes. Adopted level of service standards should reflect access, mobility, mode-split, or capacity goals for the transportation facility depending upon the surrounding development density and community goals, and should be developed in consultation with transit agencies serving the planning area.

(f) System expansion needs should include considerations for: Repair, replacement, or enhancement, and/or expansion.

(g) Transportation system management (TSM) and transportation demand management (TDM) implementation measures can include, but not necessarily be limited to: Signal coordination, channelization, high occupancy vehicle (HOV) lanes, ridesharing, trip substitution, trip shifting, increased public transportation, parking policies and high occupancy subsidy programs. Provision should be made for evaluating the effectiveness of these strategies, and funding sources should be identified.

(h) The finance subelement should include, but not necessarily be limited to:

(i) Results of the identification study of current and projected deficiencies;

(ii) Development of cost estimates to alleviate deficiencies;

(iii) Assessment of revenue forecasts/shortfalls;

(iv) Development of financing policies; and

(v) Development of a financing schedule which matches projects and funding availability.

If sufficient public and/or private funding cannot be found, land use assumptions will be reassessed to ensure that level of service standards will be met, or level of service standards will be adjusted.

(i) Intergovernmental coordination.

(i) Jurisdictions should assess the impacts of their transportation and land use decisions on adjacent jurisdictions. Impacts of those decisions should be identified and discussion of strategies to address inconsistencies should be included.

(A) A discussion of how the local transportation and land use goals relate to adjacent jurisdictions' transportation and land use goals, county-wide policies, regional land use and transportation strategies, and statewide goals outlined in the act.

(B) Local jurisdictions should refer to the Washington state transportation policy plan for guidance on statewide transportation policy.

(C) Local jurisdictions should refer to the regional transportation plan produced by the regional transportation planning organization for guidance concerning the designated regional transportation system. Local jurisdictions should also define their community's role in the regional transportation and land use strategy and produce transportation and land use plans, and development regulations which promote that role.

(D) Local jurisdictions should refer to the responsible transportation agencies for information concerning current and projected plans for air, land, and water transportation facilities and services. Local jurisdictions and agencies responsible for air, land, and water transportation facilities and services should cooperate in identifying and resolving land use and transportation linkage issues.

(ii) All transportation projects which have an impact on the regional transportation system must be consistent with the regional transportation plan as defined by RCW 47.80.030. A regional transportation planning organization shall certify that the transportation elements of the adopted county, city, and town comprehensive plans within the region conform with RCW 36.70A.070. Regional transportation plans, state transportation plans, and county and city comprehensive plans shall be consistent with one another.

(iii) Traffic forecasts should be based on adopted regional growth strategies, the regional transportation plan, and comprehensive plans within the region to ensure consistency between jurisdictions. The forecast of at least ten years of travel demand should include vehicular, transit, and nonmotorized modes of transportation.

(iv) The state department of transportation and the transportation commission will develop a state transportation plan as required by RCW 47.01.071, and identify and jointly plan improvements and strategies within corridors of regional or statewide significance coordinated and consistent with the RTPO's.

Local jurisdictions should refer to the *Systems Plan* produced by the department of transportation for service objectives on state-owned transportation facilities, proposed improvements, and identification of deficiencies for the state-owned transportation facilities.

The department of transportation should be involved with the regionally coordinated effort to set level of service standards for arterials and transit routes.

(v) Key coordination efforts between interested public, private, and citizen groups should include: Transportation plan development; identification of needs; land use coordination; capital program development; prioritization of projects, financial plan, LOS standards development; capacity accounting procedures; development review process; timing of concurrency review; analysis methods; legal requirements (vesting, appeals); concurrency management system ordinance; LOS monitoring.

[Statutory Authority: RCW 36.70A.190 (4)(b). 92-23-065, § 365-195-325, filed 11/17/92, effective 12/18/92.]

WAC 365-195-330 Rural element. (1) **Requirements.** This element is required only of counties. This element shall include lands that are not designated for urban growth, agriculture, forest, or mineral resources. The rural element shall permit land uses that are compatible with the rural character of such lands and provide for a variety of rural densities.

(2) **Recommendations for meeting requirements.** The following steps are recommended in preparing the rural element:

(a) Identification of rural lands.

(b) Identification of the amount of population growth within the twenty-year planning period which will be permitted to live or work on rural lands. This population should be consistent with an area of low-density where the full array of urban governmental services is not available.

(c) Adoption of policies for the development of such lands, including:

(i) Identification of the general type of uses to be permitted;

(ii) Provision for a variety of densities for residential, commercial, and industrial development consistent with maintenance of the rural character of the area. Consideration should be given to policies allowing the approval of planned unit developments, density averaging, cluster housing, and innovative techniques of managing development within overall parameters of rural density.

(iii) Establishment of a definition of rural governmental services which identifies the limited public facilities and services which should be provided to persons living or working in rural areas.

(iv) Determination of appropriate buffers between agricultural, forest, and mineral resource lands of long-term commercial significance and rural lands.

(v) Provisions regulating development at the boundary of urban growth areas so as not to foreclose the possible eventual orderly inclusion of such areas within urban growth areas.

(d) Adoption of policies for preservation of the rural character of such lands, including:

(i) Preservation of critical areas, consistent with private property rights;

(ii) Continuation of agricultural uses, the cultivation of timber, and excavation of mineral resources on lands not designated as possessing long-term commercial significance for such uses;

(iii) Encouragement of the use of rural lands for recreational pursuits which preserve open space and are environmentally benign;

(iv) Adoption of strategies for the acquisition of natural areas of high scenic value;

(v) Establishment of criteria for environmental protection, including programs to control nonpoint sources of water pollution and to preserve and enhance habitat for fish and wildlife.

[Statutory Authority: RCW 36.70A.190 (4)(b). 92-23-065, § 365-195-330, filed 11/17/92, effective 12/18/92.]

WAC 365-195-335 Urban growth areas. (1) **Requirements.**

(a) Each county planning under the Act shall designate an urban growth area or areas within which urban growth shall be encouraged and outside of which growth can occur only if it is not urban in nature.

(b) Each city that is located in such a county shall be included within an urban growth area. An urban growth area may include more than a single city.

(c) An urban growth area may include territory that is located outside a city if such territory already is characterized by urban growth or is adjacent to territory already characterized by urban growth.

(d) Based upon the population growth management planning population projection made for the county by the office of financial management, the urban growth areas in the county shall include areas and densities sufficient to permit the urban growth that is projected to occur in the county for the succeeding twenty-year period. Each urban growth area shall permit urban densities and shall include greenbelt and open space areas.

(e) Urban growth should be located first in areas already characterized by urban growth that have existing public facility and service capacities to serve such development.

(f) Urban growth should be located second in areas already characterized by urban growth that will be served by a combination of both existing public facilities and services and any additional needed public facilities and services that are provided by either public or private sources.

(g) It is appropriate that urban government services be provided by cities and urban government services should not be provided in rural areas.

(2) **General procedure.**

(a) The designation process shall include consultation by the county with each city located within its boundaries.

(b) Each city shall propose the location of an urban growth area.

(c) The county shall attempt to reach agreement with each city on the location of an urban growth area within which the city is located.

(d) If an agreement is not reached with each city located within the urban growth area, the county shall justify in writing why it so designated an urban growth area.

(3) **Recommendations for meeting requirements.** The following steps are recommended in developing urban growth areas:

(a) County-wide planning policies. In adopting urban growth areas, each county should be guided by the applicable county-wide (and in some cases multicounty) planning policies. To the maximum extent possible, the creation of urban growth areas should result from a cooperative effort among the jurisdictions involved.

(b) General considerations. For all jurisdictions planning under the act, the urban growth area should represent the physical area within which that jurisdiction's vision of urban development can be realized over the next twenty years. The urban growth area should be based on densities selected to promote goals of the act -densities which accommodate urban growth served by adequate public facilities and discourage sprawl.

(c) Development of city proposals. In developing the proposal for its urban growth area, each city should engage in a process of analysis which involves the steps set forth in (d), (e), and (f) of this subsection.

(d) Determination of the amount of land necessary to accommodate likely growth. This process should involve at least:

(i) A forecast of the likely future growth of employment and population in the community, utilizing the twenty-year population projection for the county in conjunction with data on current community population, recent trends in population, and employment in and near the community and assumptions about the likelihood of continuation of such trends. Where available, regional population and employment forecasts should be used.

(ii) Selection of community growth goals with respect to population, commercial and industrial development and residential development.

(iii) Selection of the densities the community seeks to achieve in relation to its growth goals.

(iv) Estimation of the amount of land needed to accommodate the likely level of development at the densities selected.

(v) Identification of the amount of land needed for the public facilities, public services, and utilities necessary to support the likely level of development.

(vi) Identification of the appropriate amount of greenbelt and open space to be preserved or created in connection with the overall growth pattern.

(e) Determination of the geographic area to be encompassed to provide the necessary land. This process should involve at least:

(i) An inventory of lands within existing municipal boundaries which is available for development, including vacant land, partially used land, and land where redevelopment is likely.

(ii) An estimate of lands within existing municipal boundaries which are potentially available for public capital facilities and utilities necessary to support anticipated growth.

(iii) An estimate of lands which should be allocated to greenbelts and open space and lands which should be protected as critical areas.

(iv) If the lands within the existing municipal boundaries are not sufficient to provide the land area necessary to accommodate likely growth, similar inventories and estimates should be made of lands in adjacent unincorporated territory already characterized by urban growth, if any such territory exists.

(v) The community's proposed urban growth area should encompass a geographic area which matches the amount of land necessary to accommodate likely growth. If there is physically no territory available into which a city might expand, it may need to revise its proposed densities or population levels in order to accommodate growth on its existing land base.

(f) Evaluation of the determination of geographic requirements. The community should perform a check on the realism of the area proposed by evaluating:

(i) The anticipated ability to finance by all means the public facilities, public services, and open space needed in the area over the planning period.

(ii) The effect that confining urban growth within the areas defined is likely to have on the price of property and the impact thereof on the ability of residents of all economic strata to obtain housing they can afford.

(iii) Whether the level of population and economic growth contemplated can be achieved within the capacity of available land and water resources and without environmental degradation.

(iv) The extent to which the plan of the county and of other communities will influence the area needed.

If, as a result of these evaluations, the area appears to have been drawn too small or too large, the city's proposal should be adjusted accordingly.

(g) County actions in adopting urban growth areas. The designation of urban growth areas should ultimately be incorporated into the comprehensive plan of each county that plans under the act. However, every effort should be made to complete the urban growth area designation process earlier, so that the comprehensive plans of both the county and the cities can be completed in reliance upon it. Before completing the designation process, counties should engage in a process which involves the steps set forth in (h) through (j) of this subsection.

(h) The county should determine how much of its twenty-year population projection is to be allocated to rural areas and other areas outside urban growth areas and how much should be allocated to urban growth.

(i) The county should attempt to define urban growth areas so as to accommodate the growth plans of the cities, while recognizing that physical location or existing patterns of service make some unincorporated areas which are characterized by urban growth inappropriate for inclusion in any city's potential growth area. The option of incorporation should be preserved for some unincorporated communities upon the receipt of additional growth.

(j) The total area designated as urban growth area in any county should be sufficient to permit the urban growth that is projected to occur in the county for the succeeding twenty-year period, unless some portion of that growth is allocated to a new community reserve established in anticipation of a proposal for one or more new fully contained communities.

(k) Actions which should accompany designation of urban growth areas. Consistent with county-wide planning policies, cities and counties consulting on the designation of urban growth areas should make every effort to address the following as a part of the process:

(i) Establishment of agreements regarding land use regulations and the providing of services in that portion of the urban growth area outside of an existing city into which it is eventually expected to expand.

(ii) Negotiation of agreements for appropriate allocation of financial burdens resulting from the transition of land from county to city jurisdiction.

(iii) Provision for an ongoing collaborative process to assist in implementing county-wide planning policies, resolving regional issues, and adjusting growth boundaries.

(l) Urbanized areas outside of urban growth areas.

(i) New fully contained communities. A county may establish a process, as part of its urban growth area designation, for reviewing proposals to authorize new fully contained communities located outside the initially designated urban growth areas. If such a process is established, the criteria for approval are as set forth in RCW 36.70A.350. The approval procedures shall be adopted as a development regulation. However, such communities may be approved only if a county reserves a portion of the twenty-year population projection for allocation to such communities. When a county establishes a new community reserve it shall reduce the urban growth area accordingly. The approval of an application for a new fully contained community shall have the effect of amending the comprehensive plan to include the new community as an urban growth area.

(ii) Master planned resorts. A county may establish procedures for approving master planned resorts constituting urban growth outside of an urban growth area. Such a resort may be authorized only if the comprehensive plan and development regulations of the county comply with the requirements of RCW 36.70A.360.

[Statutory Authority: RCW 36.70A.190 (4)(b). 92-23-065, § 365-195-335, filed 11/17/92, effective 12/18/92.]

WAC 365-195-340 Siting essential public facilities. (1) **Requirements.** Each comprehensive plan shall include a process for identifying and siting essential public facilities.

(a) Essential public facilities include those facilities that are typically difficult to site, such as airports, state education facilities, state and local correctional facilities, state or regional transportation facilities, solid waste handling facilities, and in-patient facilities including substance abuse facilities, mental health facilities, and group homes.

(b) The office of financial management shall maintain a list of those essential state public facilities that are required or likely to be built within the next six years. Facilities may be added to this list at any time.

(c) No local comprehensive plan may preclude the siting of essential public facilities.

(2) **Recommendations for meeting requirements.** Each comprehensive plan should include a process for siting essential public facilities. Where such facilities are of a county-wide or statewide nature this process should conform to the applicable county-wide planning policy.

(a) Identifying facilities.

(i) In the identification of essential public facilities, the broadest view should be taken of what constitutes a public facility, involving the full range of services to the public provided by government, substantially funded by government, contracted for by government, or provided by private entities subject to public service obligations.

(ii) The comprehensive plans should contain local criteria for the identification of essential public facilities, focusing on the public need for the services involved. There are three sources from which local lists of essential public facilities should be drawn:

(A) The state list. This is the list of essential state public facilities that are required or likely to be built within the next six years maintained by the office of financial management.

(B) The county-wide list. This is a list of essential public facilities of a county-wide or regional nature, made part of or pursuant to the county-wide planning policies adopted by counties in consultation with cities.

(C) The city or county list. This is a list of locally essential facilities, adopted by each planning jurisdiction. It is irrelevant to this listing that a facility may be funded by or operated by the state or another public or private entity other than the planning jurisdiction. The critical concern is that the facility be needed locally.

(iii) Not all essential public facilities are always difficult to site. Conversely, sometimes essential public facilities of a type usually easy to site will present siting difficulties. The initial step in the siting process should be a determination as a threshold matter of whether the essential public facility in question presents siting difficulties.

(A) If the facility does not present siting difficulties, it should be relegated to the normal siting process otherwise applicable to a facility of its type.

(B) If the facility does present siting difficulties, it should be subjected to the siting process called for below.

(b) Siting process.

(i) The comprehensive plan should describe the components of a siting process for essential public facilities which are difficult to site to be implemented on a case-by-case basis through development regulations.

(ii) The process should provide for a cooperative interjurisdictional approach to siting of essential public facilities of a county-wide, regional, or statewide nature, consistent with county-wide planning policies.

(iii) Agreements among jurisdictions should be sought to mitigate any disproportionate financial burden which may fall on the jurisdiction which becomes the site of a facility of a statewide, regional, or county-wide nature.

(iv) Where essential public facilities may be provided by special districts, the plans under which those districts operate must be consistent with the comprehensive plan of the city or county. Cities and counties should adopt provisions for consultation to ensure that such districts exercise their powers in a way that does not conflict with the relevant comprehensive plan.

(v) The siting process should take into consideration the need for county-wide, regional, or statewide uniformity in connection with the kind of facility under review.

(vi) The siting process should include criteria which address the issues which make essential public facilities difficult to site, and involve a public participation component. Consideration should be given to the extent to which design conditions can be used to make a facility compatible with its surroundings, and to adoption of provisions for amenities or incentives for neighborhoods or jurisdictions in which facilities are sited.

(c) No preclusion. While it is clear that essential public facilities of a county-wide or statewide nature will not be sited within the jurisdictional boundaries of every jurisdiction planning under the act, no comprehensive plan may directly or indirectly preclude the siting of essential public facilities. Provision therefore should be made to establish a general use category which will provide for the siting of such facilities, should the occasion arise.

[Statutory Authority: RCW 36.70A.190 (4)(b). 92-23-065, § 365-195-340, filed 11/17/92, effective 12/18/92.]

WAC 365-195-345 Optional elements. (1) A comprehensive plan may include additional elements, items, or studies dealing with other subjects relating to the physical development within its jurisdiction, including, but not limited to:

(a) Conservation;

(b) Solar energy;

(c) Recreation.

(2) A comprehensive plan may include, where appropriate, subarea plans, each of which is consistent with the comprehensive plan.

(3) The department recommends that strong consideration be given to including elements on the following within comprehensive plans:

(a) Economic development;

(b) Environmental protection (including critical areas);

(c) Natural resource lands (where applicable);

(d) Design.

[Statutory Authority: RCW 36.70A.190 (4)(b). 92-23-065, § 365-195-345, filed 11/17/92, effective 12/18/92.]

PART FOUR
INVENTORIES AND REVIEWS

WAC 365-195-400 Natural resource lands. (1) **Requirements.** Prior to the development of comprehensive plans, cities and counties planning under the act ought to have designated natural resource lands of long-term commercial significance and adopted development regulations to assure their conservation. Such lands include agricultural lands, forest lands, and mineral resource lands. The previous designations and development regulations shall be reviewed in connection with the comprehensive plan adoption process and where necessary be altered to ensure consistency. Forest land and agricultural land located within urban growth areas shall not be designated as forest land or agricultural land of long-term commercial significance unless the city or county has enacted a program authorizing transfer or purchase of development rights.

(2) **Recommendations for meeting requirements.** Much of the analysis which is the basis for the comprehensive plan will come later than the initial identification and regulation of natural resource lands. The result may be plan features which conflict with previous natural resource land provisions.

(a) The department has issued guidelines for the classification of natural resource lands which are contained in chapter 365-190 WAC.

(b) Generally natural resource lands should be located beyond the boundaries of urban growth areas. In most cases, the designated purposes of such lands are incompatible with urban densities.

(c) The review of existing designations should, in most cases, be limited to the question of consistency with the comprehensive plan, rather than a revisiting the entire prior designation and regulation process. However, to the extent that new information is available or errors have been discovered, the review process should take this information into account.

(d) Review for consistency in this context should include whether the planned use of lands adjacent to agricultural, forest, or mineral resource lands will interfere with the continued use in an accustomed manner and in accordance with the best management practices of the designated lands for the production of food, agricultural products, or timber or for the extraction of minerals.

[Statutory Authority: RCW 36.70A.190 (4)(b). 92-23-065, § 365-195-400, filed 11/17/92, effective 12/18/92.]

WAC 365-195-410 Critical areas. (1) **Requirements.** Prior to the development of comprehensive plans, cities and counties ought to have designated critical areas and adopted regulations protective of them. Such areas are defined to include:

(a) Wetlands;

(b) Areas of critical recharging effect on aquifers used for potable water;

(c) Fish and wildlife habitat conservation areas;

(d) Frequently flooded areas; and

(e) Geologically hazardous areas.

The previous designations and regulations shall be reviewed in the comprehensive plan process to ensure consistency.

(2) **Recommendations for meeting requirements.** Much of the analysis which is the basis for the comprehensive plan will come later than the initial identification and regulation of critical areas. The result may be plan features which conflict with the previous critical area provisions.

(a) The department has issued guidelines for the classification of critical areas which are contained in chapter 365-190 WAC.

(b) Critical areas should be designated and protected wherever the applicable natural conditions exist, whether within or outside of urban growth areas.

(c) The review of existing designations should, in most cases, be limited to the question of consistency with the comprehensive plan, rather than a revisiting of the entire prior designation and regulation process. However, to the extent that new information is available or errors have been discovered, the review process should take this information into account.

(d) In connection with critical area protection, the department recommends that planning jurisdictions identify the policies by which decisions are made on when and how police powers will be used (regulation) and when and how other means will be employed (purchases, development rights, etc.).

[Statutory Authority: RCW 36.70A.190 (4)(b). 92-23-065, § 365-195-410, filed 11/17/92, effective 12/18/92.]

WAC 365-195-420 Identification of open space corridors. (l) **Requirements.**

(a) Each county or city planning under the act shall identify open space corridors within and between urban growth areas. They shall include lands useful for recreation, wildlife habitat, trails, and connection of critical areas as defined in RCW 36.70A.030.

(b) The city or county may seek to acquire by purchase the fee simple or lesser interests in these open space corridors using funds authorized by RCW 84.34.230 or other sources.

(2) **Recommendations for meeting requirements.** The data for meeting this requirement should be acquired by the analysis which goes into developing the urban growth area designation and the land use element of comprehensive plans.

[Statutory Authority: RCW 36.70A.190 (4)(b). 92-23-065, § 365-195-420, filed 11/17/92, effective 12/18/92.]

WAC 365-195-430 Identification of lands useful for public purposes. (1) **Requirements.** Each county and city planning under the act shall identify land useful for public purposes such as utility corridors, transportation corridors, landfills, sewage treatment facilities, storm water management facilities, recreation, schools, and other public uses. The county shall work with the state and with the cities within the county's borders to identify areas of shared need for public facilities. The jurisdictions within the county shall prepare a prioritized list of lands necessary for the identified public uses including an estimated date by which the acquisition will be needed. The respective capital acquisition budgets for each jurisdiction shall reflect the jointly agreed upon priorities and time schedule.

(2) **Recommendations for meeting requirements.** The data for meeting this requirement should be acquired by the analysis which goes into developing the urban growth area designations and the land use, utilities and transportation elements of comprehensive plans. The department recommends that the information derived in meeting this requirement be made generally available only to the extent necessary to meet the requirements of the public disclosure laws.

[Statutory Authority: RCW 36.70A.190 (4)(b). 92-23-065, § 365-195-430, filed 11/17/92, effective 12/18/92.]

PART FIVE
CONSISTENCY

WAC 365-195-500 Internal consistency. Each comprehensive plan shall be an internally consistent document and all elements shall be consistent with the future land use map. This means that each part of the plan should be integrated with all other parts and that all should be capable of implementation together. Internal consistency involves at least two aspects:

(1) Ability of physical aspects of the plan to coexist on the available land.

(2) Ability of the plan to provide that adequate public facilities are available when the impacts of development occur (concurrency).

Each plan should provide mechanisms for ongoing review of its implementation and adjustment of its terms whenever internal conflicts become apparent.

[Statutory Authority: RCW 36.70A.190 (4)(b). 92-23-065, § 365-195-500, filed 11/17/92, effective 12/18/92.]

WAC 365-195-510 Concurrency. (1) Transportation. The aim of transportation planning for local jurisdictions is to achieve concurrency for transportation facilities. If concurrency for transportation facilities is not achieved, development may not be approved.

(2) Other public facilities. Each comprehensive plan should designate those public facilities in addition to transportation facilities for which concurrency is required.

(3) Levels of service. The concept of concurrency is based on the maintenance of specified levels of service with respect to each of the public facilities to which concurrency applies. For all such facilities, planning jurisdictions should designate appropriate levels of service.

(a) Transportation. The designation of levels of service in the transportation area will be influenced by regional considerations. For transportation facilities subject to regional transportation plans under RCW 47.80.030, local levels of service should conform to the regional plan. Other transportation facilities, however, may reflect local priorities.

(b) Levels of service should be set to reflect realistic expectations consistent with the achievement of growth aims. Setting such levels too high could, under some regulatory strategies, result in no growth. As a deliberate policy, this would be contrary to the act.

(4) Regulatory response to the absence of concurrency. The plan should provide a strategy for what happens when approval of any particular development would cause levels of service for concurrency to fall below the locally adopted standards. Denial of approval is statutorily required only in the area of transportation facilities. To the extent that any jurisdiction uses denial of development as its regulatory response to the absence of concurrency, consideration should be given to defining this as an emergency for the purposes of the ability to amend or revise the comprehensive plan.

[Statutory Authority: RCW 36.70A.190 (4)(b). 92-23-065, § 365-195-510, filed 11/17/92, effective 12/18/92.]

WAC 365-195-520 Interjurisdictional consistency. Adopted county-wide planning policies are designed to ensure that city and county comprehensive plans are consistent. Each local comprehensive plan should demonstrate that such policies have been followed in its development.

[Statutory Authority: RCW 36.70A.190 (4)(b). 92-23-065, § 365-195-520, filed 11/17/92, effective 12/18/92.]

WAC 365-195-530 Coordination with other plans. Each planning jurisdiction should circulate its proposed comprehensive plan to other jurisdictions with which it shares a common border or has related regional issues. The proposed plan should be accompanied by the environmental documents concerning it. Reviewing jurisdictions should be considered to have concurred in the provisions of a plan, unless within a reasonable period of time, they provide written comment identifying plan features which will preclude or interfere with the achievement of any features of their own plans. All jurisdictions should attempt to resolve conflicts over interjurisdictional consistency through consultation and negotiation.

[Statutory Authority: RCW 36.70A.190 (4)(b). 92-23-065, § 365-195-530, filed 11/17/92, effective 12/18/92.]

WAC 365-195-540 Analysis of cumulative effects. It is recognized that the growth of each jurisdiction will have ripple effects which will reach across jurisdictional boundaries. Each city or county planning under the act should analyze what such effects are likely to be if the development it anticipates occurs. This analysis should be made as a part of the process of complying with the State Environmental Policy Act (SEPA) in connection with comprehensive plan adoption. Affected jurisdictions should be given an opportunity to comment on this analysis.

[Statutory Authority: RCW 36.70A.190 (4)(b). 92-23-065, § 365-195-540, filed 11/17/92, effective 12/18/92.]

PART SIX
ADOPTION PROCEDURES

WAC 365-195-600 Public participation. (l) **Requirements.** Each county and city planning under the act shall establish procedures for early and continuous public participation in the development and amendment of comprehensive land use plans and development regulations implementing such plans. The procedures shall provide for broad dissemination of proposals and alternatives, opportunity for written comments, public meetings after effective notice, provision for open discussion, communication programs, information services, and consideration of and response to public comments. Errors in exact compliance with the established procedures shall not render the comprehensive plan or development regulations invalid if the spirit of the procedures is observed.

(2) **Recommendations for meeting requirements.** The recommendations made in this subsection are intended as a list of possible choices, but it is recognized that meaningful public participation can be accomplished without using all of the suggestions made here or by adopting other methods.

(a) Public involvement in plan and regulation development.

(i) In designing its public participation program, each planning jurisdiction should endeavor to involve the broadest cross-section of the community, so that groups not previously involved in planning become involved. The programs should include efforts to explain that citizen input is an essential part of the planning process and provide a framework for advising citizens about timelines for steps in the process and when citizen input will be sought.

(ii) Visioning. The public should be involved at the earliest possible time in the process of comprehensive planning under the act. This should begin with a visioning process in which the public is invited to participate in a broad definition of the kind of future to be sought for the community. The results of this process should then be incorporated into the plan features, including, but not limited to, locally adopted levels of service and densities selected for commercial, industrial, and residential development.

(iii) Planning commission. In the process of plan development, full use should be made of the planning commission as a liaison with the public.

(iv) Public meetings on draft plan. Once the plan is completed in draft form, or as parts of it are drafted, a series of public meetings or workshops should be held at various locations throughout the jurisdiction to obtain public reaction and suggestions.

(v) Public hearings. When the final draft of the plan has been completed, at least one public hearing should be held prior to the presentation of the final draft to the legislative authority of the jurisdiction adopting it. When the plan is proposed for adoption, the legislative authority should conduct another public hearing prior to voting on adoption.

(vi) Written comment. At each stage of the process when public input is sought, opportunity should be provided to make written comment.

(vii) Communication programs and information services. Each jurisdiction should make every effort to collect and disseminate public information explaining the act and the process involved in complying with it. In addition, locally relevant information packets and brochures should be developed and disseminated. Planners should actively seek to appear before community groups to explain the act and the plan development process.

(viii) Proposals and alternatives. Whenever public input is sought on proposals and alternatives, the relevant drafts should be reproduced and made available to interested persons.

(ix) Notice. Notice of all events at which public input is sought should be broadly disseminated in advance through all available means, including flyers and press releases to print and broadcast media. Notice should be published in a newspaper of general circulation at least one week in advance of any public hearing. When appropriate, notices should announce the availability of relevant draft documents on request.

(x) All meetings and hearings to which the public is invited should be free and open. At hearings all persons desir-

ing to speak should be allowed to do so, consistent with time constraints.

(xi) Consideration of and response to public comments. All comments and recommendations of the public should be reviewed. Adequate time should be provided between the time of any public hearing and the date of adoption of all or any part of the comprehensive plan to evaluate and respond to public comments. The proceedings and all public hearings should be recorded. A summary of public comments and an explanation of what action was taken in response to them should be made in writing and included in the record of adoption of the plan.

(xii) Every effort should be made to incorporate public involvement efforts into the SEPA process.

(xiii) Except for the visioning effort, the same steps should precede the adoption of development regulations as was used for the comprehensive plan.

(b) Continuous public involvement. The planning commission should monitor development of both the plan and the development regulations. After these are adopted, the commission should monitor compliance. The commission should report to the city or county at least annually on possible amendments to the plan or development regulations. In addition at least annually, the commission should convene a public meeting to provide information on how implementation is progressing and to receive public input on changes that may be needed. When any amendments are proposed for adoption, the same public hearing procedure should be followed as attended initial adoption.

[Statutory Authority: RCW 36.70A.190 (4)(b). 92-23-065, § 365-195-600, filed 11/17/92, effective 12/18/92.]

WAC 365-195-610 State Environmental Policy Act (SEPA). Adoption of comprehensive plans and development regulations are "actions" as defined under SEPA. This means that SEPA compliance is necessary. When a complete new plan is being written, in most instances, the preparation of an environmental impact statement (EIS) will be required prior to its adoption. SEPA compliance should be considered as part of the planning process rather than as a separate exercise. Indeed, the SEPA analysis and documentation can serve, in significant part, to fulfill the need to compile a record showing the considerations which went into the plan and why one alternative was chosen over another. SEPA compliance for development regulations should concentrate on the impact difference among alternative means of successfully implementing the plan. Detailed discussion of SEPA compliance is contained in Department of Ecology Publication No. 92-07, "*The Growth Management Act and the State Environmental Policy Act, A Guide to Interrelationships.*"

[Statutory Authority: RCW 36.70A.190 (4)(b). 92-23-065, § 365-195-610, filed 11/17/92, effective 12/18/92.]

WAC 365-195-620 Submissions to state. (l) Each county or city proposing adoption of a comprehensive plan or development regulations shall notify the department of its intent at least sixty days prior to final adoption. Notification shall be made by filing with the department five complete copies of the plan or development regulation(s). In addition, copies shall be provided to other state agencies identified on a list distributed by the department to planning jurisdictions. State agencies including the department many provide comments, during the public review process prior to adoption.

(2) Each county or city planning under the act shall transmit a complete and accurate copy of its comprehensive plan or development regulations to the department within ten days after final adoption.

(3) Any proposed amendments for permanent changes to a comprehensive plan or development regulation shall be submitted to the department in the same manner as initial plans and development regulations. Adopted amendments shall be transmitted to the department in the same manner as the initial plans and regulations.

[Statutory Authority: RCW 36.70A.190 (4)(b). 93-17-040, § 365-195-620, filed 8/11/93, effective 9/11/93; 92-23-065, § 365-195-620, filed 11/17/92, effective 12/18/92.]

WAC 365-195-630 Amendment. (1) Each plan should provide for an ongoing process of evaluation to ensure internal and interjurisdictional consistency of comprehensive plans and continuous consistency of development regulations with such plans. This evaluation should be an integral part of the amendment process.

(2) Each comprehensive plan shall contain provisions governing its amendment. Amendments to the plan shall not be considered more frequently than once every year, except in cases of emergency. The amendment process shall include a requirement that all proposed amendments in any year be considered concurrently so that the cumulative effect of the various proposals can be ascertained.

(3) Each county that designates urban growth areas shall review, at least every ten years, its designated urban growth areas, and the densities permitted within both the incorporated and unincorporated portions of each urban growth area. In conjunction with this review, each city located within the county shall review the densities permitted within its boundaries, and the extent to which the urban growth occurring within its urban growth area has located within its boundaries and the extent to which such growth has located within the unincorporated portions of the urban growth area. The urban growth areas and densities permitted in urban growth areas shall be revised to accommodate the urban growth projected to occur in the county for the succeeding twenty-year period.

[Statutory Authority: RCW 36.70A.190 (4)(b). 92-23-065, § 365-195-630, filed 11/17/92, effective 12/18/92.]

WAC 365-195-640 Record of process. (1) Whenever a provision of the comprehensive plan or development regulations is based on factual data, that data or a clear reference to its source should be made a part of the record of adoption.

(2) The record should contain a complete exposition of how the public participation requirements were met.

(3) All public hearings should be recorded and tape recordings kept of the proceedings.

(4) The record which accompanies any amendment to the comprehensive plan or development regulations should conform to the same requirements as the initial plan and regulations.

[Statutory Authority: RCW 36.70A.190 (4)(b). 92-23-065, § 365-195-640, filed 11/17/92, effective 12/18/92.]

PART SEVEN
RELATIONSHIP OF GROWTH MANAGEMENT PLANNING TO OTHER LAWS

WAC 365-195-700 Background. For local jurisdictions subject to its terms, the Growth Management Act mandates the development of comprehensive plans and development regulations that meet statutory goals and requirements. These plans and regulations will take their place among existing laws relating to resource management, environmental protection, regulation of land use, utilities and public facilities. Many of these existing laws were neither repealed nor amended by the act.

This circumstance places responsibilities both on local growth management planners and on administrators of preexisting programs to work toward producing a single harmonious body of law.

The need to consider and recognize other laws should profoundly influence, limit and shape planning and decision making under the act. At the same time, in recognition of the broad and fundamental changes intended by creation of the growth management scheme, prior programs should be interpreted and directed, to the maximum extent possible, in a manner consistent with the products of the comprehensive new land use management system.

The far-reaching nature of the act and the wide variety of possible outcomes under its authority dictate that identification of all the points of contact between its products and other laws will have to be elaborated over time. The entire process of determining how the act fits into the overall legal framework will, of necessity, be an incremental one. Nonetheless, for growth management to succeed, this process must begin at the outset.

At the planning stage, this means that a conscious effort to address the requirements of other existing law is needed as an essential initial step in the process. This need poses an unprecedented challenge to all governmental entities - municipalities, counties, regional authorities, special districts and state agencies - to communicate and collaborate. The act is a mandate to government at all levels to engage in coordinated planning and cooperative implementation.

[Statutory Authority: RCW 36.70A.190 (4)(b). 93-17-040, § 365-195-700, filed 8/11/93, effective 9/11/93; 92-23-065, § 365-195-700, filed 11/17/92, effective 12/18/92.]

WAC 365-195-705 Basic assumptions. (1) Where the legislature has spoken expressly on the relationship of the act to other statutory provisions, the explicit legislative directions shall be carried out. Examples of such express provisions are set forth in WAC 365-195-750.

(2) Absent a clear statement of legislative intent or judicial interpretation to the contrary, it should be presumed that neither the act nor other statutes are intended to be preemptive. Rather they should be considered together and, wherever possible, construed as mutually consistent.

[Statutory Authority: RCW 36.70A.190 (4)(b). 93-17-040, § 365-195-705, filed 8/11/93, effective 9/11/93.]

WAC 365-195-710 Identification of other laws. (1) In the development of their comprehensive plans and implementing regulations, cities and counties planning under the act should attempt to identify other statutes and legal authorities affecting subjects addressed by the plans and regulations.

(2) To aid in this identification, state agencies, regional authorities, special districts and utilities should implement programs to inform the planning entities of relevant programs and provisions within their jurisdiction or expertise. Every effort should be made to provide this information before the plan drafting process is complete.

(3) Opportunities to comment on draft comprehensive plans or on related SEPA documents should be used by commenting agencies as additional occasions for advising planning jurisdictions of preexisting programs and related legal authorities.

[Statutory Authority: RCW 36.70A.190 (4)(b). 93-17-040, § 365-195-710, filed 8/11/93, effective 9/11/93; 92-23-065, § 365-195-710, filed 11/17/92, effective 12/18/92.]

WAC 365-195-715 Integrating external considerations. (1) Agencies administering existing programs have already generated data, performed analyses and developed effective approaches to many of the challenges posed by the act. Planners should take advantage of such experience and use it to shape the form and content of plans and regulations under the act where relevant.

(2) Governmental entities with expertise in subjects affecting or affected by the act and private companies which provide public services should, as practicable, offer assistance to counties and cities planning under the act in formulating their plans and regulations, through model ordinances, model plan provisions, direct drafting assistance, or other technical advice.

(3) The drafting of comprehensive plans and development regulations should involve the identification of other related laws, an evaluation of any potential areas of conflict and an effort to avoid such conflicts. Where the text of outside sources can appropriately serve local needs, consideration should be given to adoption of that text in local plans or regulations.

[Statutory Authority: RCW 36.70A.190 (4)(b). 93-17-040, § 365-195-715, filed 8/11/93, effective 9/11/93.]

WAC 365-195-720 Sources of law. (1) In seeking to identify other relevant legal authorities, planners should refer to sources at all levels of government, including federal and state Constitutions, federal and state statutes, federal and state administrative regulations, and judicial interpretations thereof.

(2) The categories set forth in WAC 365-195-725 through 365-195-755 are an attempt to assist planners by highlighting various kinds of external legal provisions with which planning under the act should be concerned. Some of the categories overlap. The listing is not exhaustive. It is intended to supplement, not substitute for, the informational efforts of state agencies, regional authorities, special districts and utilities.

[Statutory Authority: RCW 36.70A.190 (4)(b). 93-17-040, § 365-195-720, filed 8/11/93, effective 9/11/93; 92-23-065, § 365-195-720, filed 11/17/92, effective 12/18/92.]

WAC 365-195-725 Constitutional provisions. (1) Local plans and regulations adopted under the act are subject to the supremacy principle of Article VI, United States Constitution and of Article XI, Section 11, Washington state Constitution.

(2) Counties and cities planning under the act are required to use a process established by the state attorney general to assure that proposed regulatory or administrative actions do not unconstitutionally infringe upon private property rights. This process is set forth in a publication entitled, "*State of Washington, Attorney General's Recommended Process for Evaluation of Proposed Regulatory or Administrative Actions to Avoid Unconstitutional Takings of Private Property*," first published in February 1992. Review and updating of this process by the attorney general is required on at least an annual basis to maintain consistency with changes in case law.

[Statutory Authority: RCW 36.70A.190 (4)(b). 93-17-040, § 365-195-725, filed 8/11/93, effective 9/11/93.]

WAC 365-195-730 Federal authorities. (1) The drafting of plans and development regulations under the act should involve a consideration of the effects of federal authority over land or resource use within the planning area, including:

(a) Treaties with Native Americans;

(b) Jurisdiction on land owned or held in trust by the federal government;

(c) Federal statutes or regulations imposing national standards;

(d) Federal permit programs and plans.

(2) Examples of such federal standards, permit programs and plans are:

(a) National ambient air quality standards, adopted under the Federal Clean Air Act;

(b) Drinking water standards, adopted under the Federal Safe Drinking Water Act;

(c) Effluent limitations, adopted under the Federal Clean Water Act;

(d) Dredge and fill permits issued by the Army Corps of Engineers under the Federal Clean Water Act;

(e) Licenses for hydroelectric projects issued by the Federal Energy Regulatory Commission;

(f) Plans created under the Pacific Northwest Electric Power Planning and Conservation Act;

(g) Recovery plans and the prohibition on taking listed species under the Endangered Species Act.

[Statutory Authority: RCW 36.70A.190 (4)(b). 93-17-040, § 365-195-730, filed 8/11/93, effective 9/11/93.]

WAC 365-195-735 State and regional authorities. (1) The drafting of plans and development regulations under the act should involve a consideration of numerous state and regional regulatory and planning provisions affecting land use, resource management, environmental protection, utilities, or public facilities including:

(a) State statutes and regulations imposing statewide standards;

(b) Programs involving state-issued permits or certifications;

(c) State statutes and regulations regarding rates, services, facilities and practices of utilities, and tariffs of utilities in effect pursuant to such statutes and regulations;

(d) State and regional plans;

(e) Regulations and permits issued by regional entities;

(f) Locally developed plans subject to approval or review by state or regional entities.

(2) Examples of statewide standards are:

(a) Water quality standards and sediment standards, adopted by the department of ecology under the state Water Pollution Control Act;

(b) Drinking water standards adopted by the department of health pursuant to the Federal Safe Drinking Water Act;

(c) Minimum functional standards for solid waste handling, adopted by the department of ecology under the state Solid Waste Management Act;

(d) Minimum cleanup standards under the Model Toxics Control Act;

(e) Statutory requirements under the Shoreline Management Act and implementing guidelines and regulations adopted by the department of ecology;

(f) Standards for forest practices, adopted by the forest practices board under the state Forest Practices Act;

(g) Minimum requirements for flood plain management, adopted by the department of ecology under the Flood Plain Management Act.

(h) Minimum performance standards for construction pursuant to the state building code;

(i) Safety codes, such as the electrical construction code, adopted by the department of labor and industries.

(3) Examples of programs involving state issued permits or certifications are:

(a) Permits relating to forest practices, issued by the department of natural resources;

(b) Permits relating to surface mining reclamation, issued by the department of natural resources;

(c) National pollutant discharge elimination permits and waste discharge permits, issued by the department of ecology;

(d) Water rights permits, issued by department of ecology under state surface and ground water codes;

(e) Hydraulic project approvals, issued by departments of fisheries and wildlife under the state fisheries code;

(f) Water quality certifications, issued by the department of ecology;

(g) Operating permits for public water supply systems, issued by the state health department;

(h) Site certifications developed by the energy facility site evaluation council.

(i) Permits relating to the generation, transportation, storage or disposal of dangerous wastes, issued by the department of ecology.

(4) Examples of state and regional plans are:

(a) State implementation plan for ambient air quality standards under the Federal Clean Air Act;

(b) State transportation policy plan;

(c) Instream resource protection regulations for water resource inventory areas adopted under the Water Resources Act of 1971;

(d) Ground water management area programs, adopted pursuant to the ground water code;

(e) Puget Sound water quality management plan adopted by the puget sound water quality authority.

(f) State outdoor recreation and open space plan;

(g) State trails plan.

(5) Examples of regulations and permits issued by regional entities are:

(a) Solid waste disposal facility permits issued by health departments under the Solid Waste Management Act;

(b) Regulations adopted by regional air pollution control authorities.

(c) Operating permits for air contaminant sources issued by regional air pollution control authorities.

(6) Examples of locally developed plans subject to approval or review by state or regional agencies are:

(a) Shorelines master programs, approved by the department of ecology;

(b) The consistency requirement for lands adjacent to shorelines of the state set forth in RCW 90.58.340.

(c) Coordinated water system plans for critical water supply service areas, approved by the state health department;

(d) Plans for individual public water systems, approved by the state health department;

(e) Comprehensive sewage drainage basin plans, approved by the department of ecology;

(f) Local moderate risk waste plans, approved by the department of ecology;

(g) Plans required to be filed with the utilities and transportation commission in accordance with WAC 480-100-251.

[Statutory Authority: RCW 36.70A.190 (4)(b). 93-17-040, § 365-195-735, filed 8/11/93, effective 9/11/93.]

WAC 365-195-740 Regional perspective. Some of the above authorities require planning for particular purposes for areas related by physical features, such as watersheds, rather than by political boundaries. Moreover, the systems addressed in resource management, service by utilities, fish and wildlife management and pollution control are generally not circumscribed by city and county lines. Planning entities should attempt to identify those subject areas which by law or logic require a regional planning approach and, where this is the case, work toward creating collaborative processes involving all agencies with jurisdiction in the relevant geographical area. This approach, where followed, should assist in achieving interjurisdictional consistency.

[Statutory Authority: RCW 36.70A.190 (4)(b). 93-17-040, § 365-195-740, filed 8/11/93, effective 9/11/93.]

WAC 365-195-745 Special siting statutes. (1) Plans and regulations adopted under the act should accommodate situations where the state has explicitly preempted all local land use regulations, as for example, in the siting of major energy facilities under RCW 80.50.110.

(2) Where special statutes relate specifically to the setting aside of designated areas for particular purposes and under particular management programs, local land use regulations adopted under the act should be consistent with those purposes and programs. Examples in this category are the statutes relating to:

(a) Natural resource conservations areas;

(b) Natural area preserves;

(c) Seashore conservation area;

(d) Scenic rivers.

[Statutory Authority: RCW 36.70A.190 (4)(b). 93-17-040, § 365-195-745, filed 8/11/93, effective 9/11/93.]

WAC 365-195-750 Explicit statutory directions. (1) In approving the Growth Management Act, the legislature expressly amended numerous existing statutes. On the matters they address, these amendments define the relationship of such existing statutes to comprehensive plans and development regulations under the act. Examples are:

(a) RCW 19.27.097 (state building code - evidence of adequate supply of potable water.)

(b) RCW 35.13.005 (annexation of unincorporated areas - prohibited beyond urban growth areas)

(c) RCW 35.58.2795 (municipal corporations - six-year transit plan consistent with GMA comprehensive plans)

(d) RCW 35.77.010 (city streets - six-year comprehensive street program consistent with GMA comprehensive plans)

(e) RCW 35A.14.005 (annexation by code cities - prohibited beyond urban growth areas)

(f) RCW 36.81.121 (county roads - six-year comprehensive road program consistent with GMA comprehensive plans)

(g) RCW 36.94.040 (sewerage, water, drainage systems - incorporation of relevant comprehensive plan provisions into sewer or water general plan)

(h) RCW 56.08.020 (sewer districts - district comprehensive sewer plan consistent with urban growth area restrictions)

(i) RCW 57.16.010 (water districts - district comprehensive water plan consistent with urban growth area restrictions)

(j) RCW 58.17.060 (short plats - written findings about appropriate provisions for infrastructure)

(k) RCW 58.17.110 (subdivisions - written findings about appropriate provisions for infrastructure)

(l) RCW 58.18.440 (land development - authority of GMA planning entities to require relocation assistance)

(m) RCW 86.12.200 (comprehensive flood control management plans - may be incorporated into comprehensive plans under the act)

(2) Approval of the act included the creation of a new chapter (chapter 47.80 RCW) authorizing and assigning duties to regional transportation planning organizations (RTPO's). These organizations were expressly given responsibilities for ensuring the consistency of transportation planning throughout a region containing multiple local governmental jurisdictions.

(3) Approval of the act included the addition of new sections (RCW 82.02.050 through 82.02.090) concerning

impact fees on development in counties or cities that plan under the GMA. These sections explicitly authorize and condition the use of such fees as part of the financing of public facility system improvements needed to serve new development.

[Statutory Authority: RCW 36.70A.190 (4)(b). 93-17-040, § 365-195-750, filed 8/11/93, effective 9/11/93.]

WAC 365-195-755 Voluntary interjurisdictional planning efforts. Needs for regional and interagency planning coordination have in some areas been responded to in the past by innovative voluntary planning efforts, such as the timber, fish and wildlife agreement and the Chelan agreement regional water resource planning process. Such efforts can provide a valuable source of prior analysis and serve as the basis for plan provisions which accomplish interjurisdictional consistency. Counties and cities planning under the GMA should evaluate such work for possible incorporation into their plans and regulations.

[Statutory Authority: RCW 36.70A.190 (4)(b). 93-17-040, § 365-195-755, filed 8/11/93, effective 9/11/93.]

WAC 365-195-760 Integration of SEPA process with creation and adoption of comprehensive plans and development regulations. (1) The SEPA process is supplementary to other governmental decision-making processes, including the processes involved in creating and adopting comprehensive plans and development regulations under the act. The thoughtful integration of SEPA compliance with the overall effort to implement the act will provide understanding and insight of significant value to the choices growth management requires.

(2) The growth management process is designed to proceed in phases, moving, by and large, from general policy-making to more specific implementation measures. Phased review available under SEPA can be integrated with the growth management process through a strategy which identifies the points in that process where the requirements of the two statutes are connected and seeks to accomplish the requirements of both at those points.

(3) In an integrated approach major emphasis should be placed on the quality of SEPA analysis at the front end of the growth management process - the local legislative phases of plan adoption and regulation adoption. The objective should be to create nonproject impact statements and progressively more narrowly focused supplementary documents which are sufficiently informative that subsequent environmental analysis at the individual project stage will, ordinarily, need to be neither extensive nor time consuming.

(4) While not compromising SEPA's basic aim of ensuring consideration of environmental impacts in advance of development, this approach can serve the goal that project applications be processed in a timely manner.

(5) In the creation of SEPA documents, maximum advantage should be taken of relevant prior environmental analysis through identification and incorporation of statements prepared by other lead agencies in connection with other plans or projects.

(6) Planners are encouraged to consult the *"SEPA/GMA Workbook"* published by the department in January of 1993. The workbook deals in detail with the integration of the two statutory processes.

[Statutory Authority: RCW 36.70A.190 (4)(b). 93-17-040, § 365-195-760, filed 8/11/93, effective 9/11/93.]

WAC 365-195-765 State agency compliance. (1) RCW 36.70A.103 declares that state agencies shall comply with the local comprehensive plans and development regulations and amendments thereto adopted pursuant to the act.

(2) The department construes the provision for state agency compliance to require that each state agency must meet local siting and building requirements when it occupies the position of an applicant proposing development, except where specific legislation explicitly dictates otherwise. Generally this means that the development of state facilities is subject to local approval procedures and substantive provisions, including zoning, density, setbacks, bulk and height restrictions.

(3) RCW 36.70A.210(4) provides that adopted county-wide planning policies shall be adhered to by state agencies. Consistent with other statutory mandates, state programs should be administered in a manner which does not interfere with implementation of the county framework for interjurisdictional consistency.

(4) Overall, the broad sweep of policy contained in the act implies a requirement that all programs at the state level accommodate the outcomes of the growth management process wherever possible. State agencies are rarely concerned solely with the rote application of fixed standards. The exercise of statutory powers, whether in permit functions, grant funding, property acquisition or otherwise, routinely involves such agencies in discretionary decision-making. The discretion they exercise should now take into account the new reality of legislatively mandated local growth management programs.

(5) After local adoption of plans and regulations under the act, state agencies are encouraged to review their existing programs in light of the local plans and regulations. Within relevant legal constraints, this review should lead to redirecting the state's actions in the interests of consistency with the growth management effort.

[Statutory Authority: RCW 36.70A.190 (4)(b). 93-17-040, § 365-195-765, filed 8/11/93, effective 9/11/93.]

WAC 365-195-770 Compliance by regional agencies and special districts. (1) Regional and special purpose government entities possess statutorily defined powers which include planning, development, regulatory, facility management and taxing functions. Such entities include regional air pollution control authorities, metropolitan municipal corporations, fire protection districts, port districts, public utility districts, school districts, sewer districts, water districts, irrigation districts, flood control districts, diking and drainage districts, park and recreation districts.

(2) Except where any specific enactment may state the contrary, the department interprets the GMA as requiring that regional agencies and special districts comply with the com-

prehensive plans and development regulations developed under the act.

[Statutory Authority: RCW 36.70A.190 (4)(b). 93-17-040, § 365-195-770, filed 8/11/93, effective 9/11/93.]

PART EIGHT
DEVELOPMENT REGULATIONS

WAC 365-195-800 Relationship to comprehensive plans. (1) Development regulations under the Growth Management Act are specific controls placed on development or land use activities by a county or city. Such regulations must be consistent with comprehensive plans developed pursuant to the act and they must implement those comprehensive plans.

"Implement" in this context has a more affirmative meaning than merely "consistent" (See WAC 365-195-210(5).) "Implement" connotes not only a lack of conflict but sufficient scope to carry out fully the goals, policies, standards and directions contained in the comprehensive plan.

(2) The legislature has specifically provided that the designation of interim urban growth areas shall be in the form of development regulations. Such interim designations shall generally precede the adoption of comprehensive plans.

[Statutory Authority: RCW 36.70A.190 (4)(b). 93-17-040, § 365-195-800, filed 8/11/93, effective 9/11/93; 92-23-065, § 365-195-800, filed 11/17/92, effective 12/18/92.]

WAC 365-195-805 Implementation strategy. Each county or city planning under the act should develop a detailed strategy for implementing its comprehensive plan. The strategy should describe the regulatory and nonregulatory measures (including actions for acquiring and spending money) to be used in order to apply the plan in full. The strategy should identify each of the specific development regulations needed.

(1) Selection. In determining the specific regulations to be adopted, jurisdictions may select from a wide variety of types of controls. The strategy should include consideration of:

(a) The choice of substantive requirements, such as the delineation of use zones; general development limitations concerning lot size, setbacks, bulk, height, density; provisions for environmental protection; urban design guidelines and design review criteria; specific requirements for affordable housing, landscaping, parking; levels of service, concurrency regulations and other measures relating to public facilities.

(b) The means of applying the substantive requirements, such as methods of prior approval through permits, licenses, franchises, or contracts.

(c) The processes to be used in applying the substantive requirements, such as permit application procedures, hearing procedures, approval deadlines, and appeals.

(d) The methods of enforcement, such as inspections, reporting requirements, bonds, permit revocation, civil penalties, and abatement.

(2) Identification. The strategy should include a list of all regulations identified as development regulations for implementing the comprehensive plan. Some of these regulations may already be in existence and consistent with the plan. Others may be in existence, but require amendment. Still others will need to be written.

(3) Adoption schedule. The strategy should include a schedule for the adoption or amendment of the development regulations identified. Individual regulations or amendments may be adopted at different times. However, all of the regulations identified should be adopted by the applicable final deadline for adoption of development regulations.

(4) The implementation strategy for each jurisdiction should be in writing and available to the public. A copy should be provided to the department. Completion of adoption of all regulations identified in the strategy will be construed by the department as completion of the task of adopting development regulations for the purposes of deadlines under the statute.

[Statutory Authority: RCW 36.70A.190 (4)(b). 93-17-040, § 365-195-805, filed 8/11/93, effective 9/11/93.]

WAC 365-195-810 Timing of initial adoption. (1) Except for interim regulations, required development regulations must be enacted either by the deadline for adoption of the comprehensive plan or within six months thereafter, if an extension is obtained. The possibility of a time gap between the adoption of a comprehensive plan and the adoption of development regulations pertains to the time frame after the initial adoption of the comprehensive plan. Subsequent amendments to the plan should not face any delay before being implemented by regulations. After adoption of the initial plan and development regulations, such regulations should at all times be consistent with the comprehensive plan. Whenever amendments to comprehensive plans are adopted, consistent implementing regulations or amendments to existing regulations should be enacted and put into effect concurrently. (See WAC 365-195-865.)

(2) To obtain an extension of the deadline for adopting development regulations, a county or city must notify the department of its need by letter prior to the initial deadline. Six-month extensions will be obtained whenever such letters are timely received, but no extensions will result from requests received after the initial deadline.

[Statutory Authority: RCW 36.70A.190 (4)(b). 93-17-040, § 365-195-810, filed 8/11/93, effective 9/11/93; 92-23-065, § 365-195-810, filed 11/17/92, effective 12/18/92.]

WAC 365-195-815 Review for compliance. (1) When adopting any development regulation intended, in part, to carry out a comprehensive plan, the proposing jurisdiction should review its terms to ensure that it is consistent with and implements the comprehensive plan and make a finding to that effect.

(2) When the implementation strategy has been completely developed, the proposing jurisdiction should review the total package to ensure that such implementation is consistent with the comprehensive plans of other counties or cities with which it shares common borders or related regional issues.

(3) Planning jurisdictions should consider the use or creation of regional entities (county-wide or broader) to provide

an interjurisdictional overview of consistency issues raised by comprehensive plans and development regulations.

[Statutory Authority: RCW 36.70A.190 (4)(b). 93-17-040, § 365-195-815, filed 8/11/93, effective 9/11/93.]

WAC 365-195-820 Submissions to state. (l) Development regulations may be submitted to the department and other state agencies for comment individually as they are drafted. Except as set forth in subsection (2) of this section, the statutory requirement to notify the department of the intent to adopt development regulations at least sixty days prior to final adoption will apply each time any implementing regulation or amendment is proposed for adoption.

(2) The department construes the sixty-day notice requirement as inapplicable to interim regulations for natural resource lands and critical areas, and to regulations or amendments which are merely procedural or ministerial.

(3) Counties and cities should provide the department with notice of intent sixty days prior to adopting interim growth areas.

(4) Separate notice should be provided to the department of all preexisting regulations that are to be included in the implementation strategy without change.

[Statutory Authority: RCW 36.70A.190 (4)(b). 93-17-040, § 365-195-820, filed 8/11/93, effective 9/11/93; 92-23-065, § 365-195-820, filed 11/17/92, effective 12/18/92.]

WAC 365-195-825 Regulations specifically required by the act. (1) Conservation of natural resource lands.

(a) Lands designated as agricultural, forest and mineral lands of long-term commercial significance are collectively referred to as natural resource lands.

(b) "Conservation" in this context is construed to mean measures designed to assure that the natural resource lands will remain available to be used for commercial production of the resources designated.

(c) Classification, designation and designation amendment. The department has adopted minimum guidelines in chapter 365-190 WAC, detailing the process involved in establishing a natural resource lands conservation program. Included are criteria to be considered before any designation change should be approved. (See WAC 365-190-040 (2)(g).)

(d) Initial adoption and subsequent review.

(i) The act requires the designation of natural resources lands by all counties and cities. The adoption of development regulations for the conservation of such lands by jurisdictions planning under the act is required to occur prior to the adoption of comprehensive plans.

(ii) Upon the adoption of the comprehensive plans, such designations and regulations must be reviewed and, where necessary altered, to ensure consistency with the plans.

(e) Review upon adoption of other development regulations.

(i) In connection with the adoption of the total package of development regulations implementing the comprehensive plan, each planning jurisdiction must again review the regulations for conserving natural resource lands to ensure consistency.

(ii) If any regulations for conserving natural resource lands are by their terms effective only in the interim before the regulations implementing comprehensive plans are adopted, the subject must be covered in the development regulation package, so that there will be no gap in the effectiveness of a natural resource lands conservation program.

(f) Statutory limitations.

(i) Prior uses. Regulations for the conservation of natural resource lands may not prohibit uses legally existing on any parcel prior to their adoption.

(ii) Adjacent lands. Such regulations shall assure that the use of lands adjacent to designated natural resource lands does not interfere with the continued use, in the accustomed manner and in accordance with the best management practices, of the natural resource lands.

(iii) Plats and permits. Counties and cities shall require that all plats, short plats, development permits, and building permits issued for development activities on, or within three hundred feet, of designated natural resource lands contain a notice that the subject property is within or near designated agricultural lands, forest lands, or mineral resource lands on which a variety of commercial activities may occur that are not compatible with residential development for certain periods of limited duration.

(g) Relationship to comprehensive plans. The act does not explicitly require that comprehensive plans address the conservation of natural resource lands. However, because the required natural resource lands regulations must be consistent with the comprehensive plans, logic dictates that each comprehensive plan should set forth the underlying policies for the jurisdiction's natural resource lands program. In pursuing the natural resource industries goal of the act, such policies should identify nonregulatory measures for assuring the conservation of the designated lands as well as regulatory approaches. When such policies are incorporated into the plan (either as a separate element or as a part of the land use element), the consistency of the regulations can be readily assessed.

(h) Relationship to other programs. In designing development regulations and nonregulatory programs to conserve designated natural resource lands, counties and cities should endeavor to make such regulations and programs fit together with regional, state and federal resource management programs applicable to the same lands. Local plans and policies may in some respects be adequately implemented by adopting the provisions of such other programs as part of the local regulations.

(2) Protection of critical areas.

(a) Critical areas include the following areas and ecosystems: Wetlands, areas of critical recharging effect on aquifers used for potable water, fish and wildlife habitat conservation areas, frequently flooded areas and geologically hazardous areas.

(b) "Protection" in this context is construed to mean measures designed to preserve the structure, values and functions of the natural environment or to safeguard the public from hazards to health and safety.

(c) Classification, designation and designation amendment. The department has adopted minimum guidelines in chapter 365-190 WAC detailing the process involved in establishing a program to protect critical areas.

(d) Initial enactment and subsequent review.

(i) The act requires the designation of critical areas and the adoption of regulations for the protection of such areas by all counties and cities. For jurisdictions planning under the act this is required to occur prior to the adoption of comprehensive plans.

(ii) Upon the adoption of the comprehensive plans, such designations and regulations must be reviewed and, where necessary altered, to ensure consistency with the plans.

(e) Review upon adoption of other development regulations.

(i) In connection with the adoption of the total package of development regulations implementing the comprehensive plan, each planning jurisdiction must again review the regulations for protecting critical areas to ensure consistency.

(ii) If any regulations for protecting critical areas are by their terms effective only in the interim before the regulations implementing comprehensive plans are adopted, the subject must be covered in the development regulation package, so that there will be no gap in the effectiveness of a critical area protection program.

(f) Relationship to comprehensive plans. The act does not explicitly require that comprehensive plans address the protection of critical areas. However, because the required critical area regulations must be consistent with the comprehensive plans, logic dictates that each comprehensive plan should set forth the underlying policies for the jurisdiction's critical areas program. In pursuing the environmental protection and open space goals of the act, such policies should identify nonregulatory measures for protecting critical areas as well as regulatory approaches. When such policies are incorporated into the plan (either in a separate element or as a part of the land use element), the consistency of the regulations can be readily assessed.

(g) Relationship to other programs. In designing development regulations and nonregulatory programs to protect designated critical areas, counties and cities should endeavor to make such regulations and programs fit together with regional, state and federal programs directed to the same environmental, health, safety and welfare ends. Local plans and policies may in some respects be adequately implemented by adopting the provisions of such other programs as part of the local regulations.

(3) Interim urban growth area designations.

(a) The adoption of interim urban growth area designations shall be preceded by public notice, public hearing, compliance with SEPA and compliance with RCW 36.70A.110.

(b) The department construes compliance with RCW 36.70A.110 for interim growth areas to require the same consultation and attempted agreement process as is required for the adoption of final urban growth areas. Where an interim urban growth area is adopted without the agreement of any affected city, the county will prepare a written justification.

(4) Subdivisions.

(a) Regulations for subdivision approvals, including approvals of short subdivisions, shall require written findings that "appropriate provisions" have been made for the public health, safety, and general welfare, including open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and schoolgrounds.

(b) Counties and cities may add other items related to the public health, safety and general welfare to the specific listing above, such as protection of critical areas, conservation of natural resource lands and affordable housing for all economic segments of the population.

(c) In drafting such regulations, "appropriate provisions" should be defined in a manner consistent with the requirements of other applicable laws and with any level of service standards or planning objectives established by the jurisdiction for the facilities involved.

(d) The definition of "appropriate provisions" could also cover the timing within which the facilities involved should be available for use, requiring, for example, that such timing be consistent with the definition of "concurrency" in this chapter. (See WAC 365-195-210(4).)

(5) Potable water.

(a) Each applicant for a building permit of a building necessitating potable water shall provide evidence of an "adequate water supply" for the intended use of the building. By statute such evidence may be in the form of a water right permit from the department of ecology, a letter from an approved water purveyor stating the ability to provide water, or another form sufficient to verify the existence of an adequate water supply.

(b) Receipt of one of the statutory forms of evidence may not provide enough information for building departments to determine whether the proposed water supply is, in fact, adequate. Local regulations should be designed to produce enough data to make such a determination, addressing both water quality and water quantity issues.

(c) Planning jurisdictions should give consideration to guidelines promulgated by the departments of ecology and health on what constitutes an "adequate water supply." In addition, Attorney General's Opinion, AGO 1992 No. 17, should be consulted for assistance in determining what substantive standards should be applied.

(d) If the department of ecology has adopted rules on this subject, or any part of it, local regulations should be consistent with those rules.

(e) Counties and cities may impose conditions on building permits requiring connection to an existing public water system where the existing system is willing and able to provide safe and reliable potable water to the applicant with reasonable economy and efficiency.

[Statutory Authority: RCW 36.70A.190 (4)(b). 93-17-040, § 365-195-825, filed 8/11/93, effective 9/11/93.]

WAC 365-195-830 Optional authorizations. (1) Relocation assistance.

(a) Any county or city required to plan under the act is authorized to require property owners to provide their portion of reasonable relocation assistance to low-income tenants displaced by certain changes to residential property. The changes include demolition, substantial rehabilitation (whether due to code enforcement or any other reason), change of use and removal of use restrictions in an assisted-housing development.

(b) The regulations implementing the relocation assistance program shall be governed by the provisions of RCW 59.18.440.

(c) "Low-income tenants" means tenants whose combined total income per dwelling unit is at or below fifty percent of the median income, adjusted for family size, in the county where the tenants reside.

(d) For purposes of determining eligibility, the department shall annually inform counties and cities of the appropriate dollar limits to use for median income, adjusted for family size, in different areas within the state. In deciding on these limits, the department will refer to the county-by-county family income figures published annually by the federal department of housing and urban development. As soon as the federal figures become available each year, the department will review them and advise counties and cities promptly of the appropriate dollar limits and their effective dates.

(2) New communities.

(a) Any county planning under the act may reserve a portion of its twenty-year population projection for new fully contained communities, located outside of the initially designated urban growth areas.

(b) Proposals to authorize such communities shall be processed pursuant to development regulations which implement the criteria set forth in RCW 36.70A.350.

(3) Master planned resorts.

(a) Any county planning under the act may permit master planned resorts constituting urban growth outside of urban growth areas.

(b) Proposals to authorize such resorts shall be processed pursuant to development regulations which implement policies on the subject in the comprehensive plan. Approval criteria shall conform to the provisions of RCW 36.70A.360.

[Statutory Authority: RCW 36.70A.190 (4)(b). 93-17-040, § 365-195-830, filed 8/11/93, effective 9/11/93; 92-23-065, § 365-195-830, filed 11/17/92, effective 12/18/92.]

WAC 365-195-835 Concurrency regulations. (1) Each planning jurisdiction should produce a regulation or series of regulations which govern the operation of that jurisdiction's concurrency management system. This regulatory scheme will set forth the procedures and processes to be used to determine whether relevant public facilities have adequate capacity to accommodate a proposed development. In addition, the scheme should identify the responses to be taken when it is determined that capacity is not adequate to accommodate a proposal. Relevant public facilities for these purposes are those to which concurrency applies under the comprehensive plan. Adequate capacity refers to the maintenance of concurrency.

(2) Compliance with applicable environmental requirements, such as ambient air quality standards or water quality standards, should have been built into the determination of the facility capacities needed to accommodate anticipated growth.

(3) The variations possible in designing a concurrency management system are many. However, such a system could include the following features:

(a) Capacity monitoring — a process for collecting and maintaining real world data on use for comparison with evolving public facility capacities in order to show at any moment how much of the capacity of public facilities is being used.

(b) Capacity allocation procedures — a process for determining whether proposed new development can be accommodated within the existing or programmed capacity of public facilities.

This can include preassigning amounts of capacity to specific zones, corridors or areas on the basis of planned growth. For any individual development this may involve:

(i) A determination of anticipated total capacity at the time the impacts of development occur.

(ii) Calculation of how much of that capacity will be used by existing developments and other planned developments at the time the impacts of development occur.

(iii) Calculation of the amount of capacity available for the proposed development.

(iv) Calculation of the impact on capacity of the proposed development, minus the effects of any mitigation provided by the applicant. (Standardized smaller developments can be analyzed based on predetermined capacity impact values.)

(v) Comparison of available capacity with project impact.

(c) Provisions for reserving capacity — a process of prioritizing the allocation of capacity to proposed developments. This might include:

(i) Setting aside a block or blocks of available or anticipated capacity for specified types of development fulfilling an identified public interest.

(ii) Adopting a first-come, first-served system of allocation, dedicating capacity to applications in the order received.

(iii) Adopting a preference system giving certain categories or specified types of development preference over others in the allocation of available capacity.

(d) Provisions specifying the response when there is insufficient available capacity to accommodate development.

(i) In the case of transportation, an ordinance must prohibit development approval if the development causes the level of service of a transportation facility to decline below the standards adopted in the transportation element of the comprehensive plan unless improvements or strategies to accommodate the impacts of development are made concurrent with development.

(ii) If the proposed development is consistent with the land use element, relevant levels of service should be reevaluated.

(iii) Other responses could include:

(A) Development of a system of deferrals, approving proposed developments in advance but deferring authority to construct until adequate public facilities become available at the location in question. Such a system should conform to and help to implement the growth phasing schedule contemplated in the land use and capital facilities elements of the plan.

(B) Conditional approval through which the developer agrees to mitigate the impacts.

(C) Denial of the development, subject to resubmission when adequate public facilities are made available.

(e) Form, timing and duration of concurrency approvals. The system should include provisions for how to show that a

project has met the concurrency requirement, whether as part of another approval document (e.g., permit, platting decisions, planned unit development) or as a separate certificate of concurrency, possibly a transferable document. This choice, of necessity, involves determining when in the approval process the concurrency issue is evaluated and decided. Approvals, however made, should specify the length of time that a concurrency determination will remain effective, including requirements for development progress necessary to maintain approval.

(f) Provisions for interjurisdictional coordination.

(4) Planning jurisdictions should consider integrating SEPA compliance on the project-specific level with the case-by-case process for concurrency management.

[Statutory Authority: RCW 36.70A.190 (4)(b). 93-17-040, § 365-195-835, filed 8/11/93, effective 9/11/93.]

WAC 365-195-840 Essential public facilities. (1) Development regulations for identifying and siting essential public facilities shall be consistent with and implement the process for this purpose set forth in the comprehensive plan.

(2) The regulations should list those types of facilities which the planning jurisdiction has determined are essential, pursuant to the definition and the criteria established in the comprehensive plan for identifying such facilities. The designated facilities should include those listed by the state office of financial management and those necessary to list in order to comply with county-wide planning policies. In addition, other facilities needed locally should be listed. These may include facilities which receive funding from the state or other governmental units, but which are not identified on the state list or by virtue of county-wide policies.

(3) Except where county-wide planning policies have otherwise dictated siting choices, provision should be made for the possibility of siting each of the listed essential public facilities somewhere within each jurisdiction's planning area.

(4) For the purposes of making the threshold determination on whether a proposal presents siting difficulties, the regulations should specify a method for publicizing applications for siting essential public facilities and for soliciting initial comment on the site(s) proposed. The regulations should describe how and by whom the threshold decision will be made.

(5) For proposals involving siting difficulties, the regulations should:

(a) Provide requirements for notice to other interested jurisdictions, and for public participation in the siting decision;

(b) Consistent with county-wide planning policies, require an evaluation of feasible alternative sites and of equity in geographical distribution;

(c) When appropriate interlocal agreements have been made, provide for an interjurisdictional process for facilities of a county-wide, regional or statewide nature;

(d) Call for an evaluation of the extent to which design features or operational conditions can eliminate or reduce unwanted project impacts;

(e) Where appropriate, establish incentives or require amenities for siting in particular areas;

(f) Include in criteria for siting decisions a consideration of the need for the particular facility in light of established level of service standards or planning assumptions.

[Statutory Authority: RCW 36.70A.190 (4)(b). 93-17-040, § 365-195-840, filed 8/11/93, effective 9/11/93; 92-23-065, § 365-195-840, filed 11/17/92, effective 12/18/92.]

WAC 365-195-845 Permit process. The development regulations of planning jurisdictions should include provisions addressing the general procedures for processing applications for development, designed to promote timeliness, fairness and predictability.

(l) Centralized processing. Consideration should be given to the establishment of a master permit or centralized permit process which would allow an applicant to apply for all needed approvals at once and for the simultaneous processing by the local jurisdiction of all aspects of project approval.

(2) Time limits. Consistent with the requirements of SEPA, consideration should be given to adopting self-imposed permit processing deadlines, so that applicants will be able to plan with greater certainty in most cases.

(3) Fast tracking. Consistent with fairness, consideration should be given to expedited permit procedures for developments which include features which the planning jurisdiction particularly wishes to encourage. An example might be the inclusion of affordable housing in a residential development project.

(4) Vertical integration. In designing permit programs planning entities should review the permit requirements of regional, state and federal agencies on the same subjects and, working with those agencies, attempt to coordinate processing in order to avoid overlapping reviews and unnecessary time delays.

[Statutory Authority: RCW 36.70A.190 (4)(b). 93-17-040, § 365-195-845, filed 8/11/93, effective 9/11/93.]

WAC 365-195-850 Impact fees. (1) Counties and cities planning under the act are authorized to impose impact fees on development activity as part of the financing for public facilities. However, the financing for system improvements to serve new development must provide a balance between impact fees and other sources of public funds and cannot rely solely on impact fees.

(2) The decision to use impact fees should be specifically implemented through development regulations. The impact fees:

(a) Shall only be imposed for system improvements that are reasonably related to the new development. "System improvements" (in contrast to "project improvements") are public facilities included in the capital facilities plan and designed to provide service to service areas within the community at large;

(b) Shall not exceed a proportionate share of the costs of system improvements that are reasonably related to the new development; and

(c) Shall be used for system improvements that will reasonably benefit the new development.

The implementing regulation should call for a specific finding on all three of the above limitations whenever an impact fee is imposed.

(3) Impact fees may be collected and spent only for the following capital facilities owned or operated by government entities: Public streets and roads; publicly owned parks, open space, and recreation facilities; school facilities; and fire protection facilities in jurisdictions that are not part of a fire district. These facilities must have been addressed in a capital facilities plan element which identifies:

(a) Deficiencies in public facilities serving existing development and the means by which existing deficiencies will be eliminated within a reasonable period of time;

(b) Additional demands placed on existing public facilities by new development; and

(c) Additional public facility improvements required to serve new development.

(4) The local ordinance by which impact fees are imposed shall strictly conform to the provisions of RCW 82.02.060. The department recommends that jurisdictions include the authorized exemption for low-income housing.

[Statutory Authority: RCW 36.70A.190 (4)(b). 93-17-040, § 365-195-850, filed 8/11/93, effective 9/11/93.]

WAC 365-195-855 Protection of private property. In the drafting of development regulations, consideration should be given to the attorney general's process of evaluation issued pursuant to RCW 36.70A.370, to assure that governmental actions do not result in an unconstitutional taking of private property. Procedures for avoiding takings, such as variances or exemptions, should be built into the overall regulatory scheme.

[Statutory Authority: RCW 36.70A.190 (4)(b). 93-17-040, § 365-195-855, filed 8/11/93, effective 9/11/93.]

WAC 365-195-860 Housing for persons with handicaps. No county or city planning under the act may enact or maintain an ordinance, development regulation, zoning regulation or official control, policy, or administrative practice which treats a residential structure occupied by persons with handicaps differently than a similar residential structure occupied by a family or other unrelated individuals. As used in this section, "handicaps" are as defined in the federal fair housing amendments of 1988 (42 U.S.C. Sec. 3602).

[Statutory Authority: RCW 36.70A.190 (4)(b). 93-17-040, § 365-195-860, filed 8/11/93, effective 9/11/93.]

WAC 365-195-865 Supplementing, amending and monitoring. (1) New development regulations may be adopted from time to time as the need for supplementing the initial implementation strategy becomes apparent. However, because development regulations must be consistent with the comprehensive plans, substantive amendments to such regulations will frequently need to be accompanied by a comprehensive plan amendment. Since comprehensive plans can be amended only once a year (except in emergencies), consideration of significant changes in the land use management scheme will, by and large, become an annual affair.

(2) Cities and counties should institute an annual review of growth management implementation on a systematic basis. To aid in this process, planning jurisdictions should consider establishing a growth management monitoring program designed to measure and evaluate the progress being made toward accomplishing the act's goals and the provisions of the comprehensive plan. This program should be integrated with provisions for continuous public involvement. (See WAC 365-195-600 (2)(b).)

[Statutory Authority: RCW 36.70A.190 (4)(b). 93-17-040, § 365-195-865, filed 8/11/93, effective 9/11/93.]

PART NINE
BEST AVAILABLE SCIENCE

WAC 365-195-900 Background and purpose. (1) Counties and cities planning under RCW 36.70A.040 are subject to continuing review and evaluation of their comprehensive land use plan and development regulations. Every five years they must take action to review and revise their plans and regulations, if needed, to ensure they comply with the requirements of the Growth Management Act. RCW 36.70A.130.

(2) Counties and cities must include the "best available science" when developing policies and development regulations to protect the functions and values of critical areas and must give "special consideration" to conservation or protection measures necessary to preserve or enhance anadromous fisheries. RCW 36.70A.172(1). The rules in WAC 365-195-900 through 365-195-925 are intended to assist counties and cities in identifying and including the best available science in newly adopted policies and regulations and in this periodic review and evaluation and in demonstrating they have met their statutory obligations under RCW 36.70A.172(1).

(3) The inclusion of the best available science in the development of critical areas policies and regulations is especially important to salmon recovery efforts, and to other decision-making affecting threatened or endangered species.

(4) These rules are adopted under the authority of RCW 36.70A.190 (4)(b) which requires the department of community, trade, and economic development (department) to adopt rules to assist counties and cities to comply with the goals and requirements of the Growth Management Act.

[Statutory Authority: RCW 36.70A.190 (4)(b). 01-08-056, § 365-195-900, filed 4/2/01, effective 5/3/01; 00-16-064, § 365-195-900, filed 7/27/00, effective 8/27/00.]

WAC 365-195-905 Criteria for determining which information is the "best available science." (1) This section provides assessment criteria to assist counties and cities in determining whether information obtained during development of critical areas policies and regulations constitutes the "best available science."

(2) Counties and cities may use information that local, state or federal natural resource agencies have determined represents the best available science consistent with criteria set out in WAC 365-195-900 through 365-195-925. The department will make available a list of resources that state agencies have identified as meeting the criteria for best avail-

able science pursuant to this chapter. Such information should be reviewed for local applicability.

(3) The responsibility for including the best available science in the development and implementation of critical areas policies or regulations rests with the legislative authority of the county or city. However, when feasible, counties and cities should consult with a qualified scientific expert or team of qualified scientific experts to identify scientific information, determine the best available science, and assess its applicability to the relevant critical areas. The scientific expert or experts may rely on their professional judgment based on experience and training, but they should use the criteria set out in WAC 365-195-900 through 365-195-925 and any technical guidance provided by the department. Use of these criteria also should guide counties and cities that lack the assistance of a qualified expert or experts, but these criteria are not intended to be a substitute for an assessment and recommendation by a qualified scientific expert or team of experts.

(4) Whether a person is a qualified scientific expert with expertise appropriate to the relevant critical areas is determined by the person's professional credentials and/or certification, any advanced degrees earned in the pertinent scientific discipline from a recognized university, the number of years of experience in the pertinent scientific discipline, recognized leadership in the discipline of interest, formal training in the specific area of expertise, and field and/or laboratory experience with evidence of the ability to produce peer-reviewed publications or other professional literature. No one factor is determinative in deciding whether a person is a qualified scientific expert. Where pertinent scientific information implicates multiple scientific disciplines, counties and cities are encouraged to consult a team of qualified scientific experts representing the various disciplines to ensure the identification and inclusion of the best available science.

(5) Scientific information can be produced only through a valid scientific process. To ensure that the best available science is being included, a county or city should consider the following:

(a) **Characteristics of a valid scientific process.** In the context of critical areas protection, a valid scientific process is one that produces reliable information useful in understanding the consequences of a local government's regulatory decisions and in developing critical areas policies and development regulations that will be effective in protecting the functions and values of critical areas. To determine whether information received during the public participation process is reliable scientific information, a county or city should determine whether the source of the information displays the characteristics of a valid scientific process. The characteristics generally to be expected in a valid scientific process are as follows:

1. **Peer review.** The information has been critically reviewed by other persons who are qualified scientific experts in that scientific discipline. The criticism of the peer reviewers has been addressed by the proponents of the information. Publication in a refereed scientific journal usually indicates that the information has been appropriately peer-reviewed.

2. **Methods.** The methods that were used to obtain the information are clearly stated and able to be replicated. The methods are standardized in the pertinent scientific discipline or, if not, the methods have been appropriately peer-reviewed to assure their reliability and validity.

3. **Logical conclusions and reasonable inferences.** The conclusions presented are based on reasonable assumptions supported by other studies and consistent with the general theory underlying the assumptions. The conclusions are logically and reasonably derived from the assumptions and supported by the data presented. Any gaps in information and inconsistencies with other pertinent scientific information are adequately explained.

4. **Quantitative analysis.** The data have been analyzed using appropriate statistical or quantitative methods.

5. **Context.** The information is placed in proper context. The assumptions, analytical techniques, data, and conclusions are appropriately framed with respect to the prevailing body of pertinent scientific knowledge.

6. **References.** The assumptions, analytical techniques, and conclusions are well referenced with citations to relevant, credible literature and other pertinent existing information.

(b) **Common sources of scientific information.** Some sources of information routinely exhibit all or some of the characteristics listed in (a) of this subsection. Information derived from one of the following sources may be considered scientific information if the source possesses the characteristics in Table 1. A county or city may consider information to be scientifically valid if the source possesses the characteristics listed in (a) of this subsection. The information found in Table 1 provides a general indication of the characteristics of a valid scientific process typically associated with common sources of scientific information.

Table 1	CHARACTERISTICS					
SOURCES OF SCIENTIFIC INFORMATION	Peer review	Methods	Logical conclusions & reasonable inferences	Quantitative analysis	Context	References
A. Research. Research data collected and analyzed as part of a controlled experiment (or other appropriate methodology) to test a specific hypothesis.	**X**	**X**	**X**	**X**	**X**	**X**
B. Monitoring. Monitoring data collected periodically over time to determine a resource trend or evaluate a management program.		**X**	**X**	**Y**	**X**	**X**
C. Inventory. Inventory data collected from an entire population or population segment (e.g., individuals in a plant or animal species) or an entire ecosystem or ecosystem segment (e.g., the species in a particular wetland).		**X**	**X**	**Y**	**X**	**X**
D. Survey. Survey data collected from a statistical sample from a population or ecosystem.		**X**	**X**	**Y**	**X**	**X**
E. Modeling. Mathematical or symbolic simulation or representation of a natural system. Models generally are used to understand and explain occurrences that cannot be directly observed.	**X**	**X**	**X**	**X**	**X**	**X**
F. Assessment. Inspection and evaluation of site-specific information by a qualified scientific expert. An assessment may or may not involve collection of new data.		**X**	**X**		**X**	**X**
G. Synthesis. A comprehensive review and explanation of pertinent literature and other relevant existing knowledge by a qualified scientific expert.	**X**	**X**	**X**		**X**	**X**
H. Expert Opinion. Statement of a qualified scientific expert based on his or her best professional judgment and experience in the pertinent scientific discipline. The opinion may or may not be based on site-specific information.			**X**		**X**	**X**

X =
characteristic must be present for information derived to be considered scientifically valid and reliable

Y =
presence of characteristic strengthens scientific validity and reliability of information derived, but is not essential to ensure scientific validity and reliability

(c) **Common sources of nonscientific information.** Many sources of information usually do not produce scientific information because they do not exhibit the necessary characteristics for scientific validity and reliability. Information from these sources may provide valuable information to supplement scientific information, but it is not an adequate substitute for scientific information. Nonscientific information should not be used as a substitute for valid and available scientific information. Common sources of nonscientific information include the following:

(i) Anecdotal information. One or more observations which are not part of an organized scientific effort (for example, "I saw a grizzly bear in that area while I was hiking").

(ii) Nonexpert opinion. Opinion of a person who is not a qualified scientific expert in a pertinent scientific discipline (for example, "I do not believe there are grizzly bears in that area").

(iii) Hearsay. Information repeated from communication with others (for example, "At a lecture last week, Dr. Smith said there were no grizzly bears in that area").

(6) Counties and cities are encouraged to monitor and evaluate their efforts in critical areas protection and incorporate new scientific information, as it becomes available.

[Statutory Authority: RCW 36.70A.190 (4)(b). 00-16-064, § 365-195-905, filed 7/27/00, effective 8/27/00.]

WAC 365-195-910 Criteria for obtaining the best available science. (1) Consultation with state and federal natural resources agencies and tribes can provide a quick and cost-effective way to develop scientific information and recommendations. State natural resource agencies provide numerous guidance documents and model ordinances that incorporate the agencies' assessments of the best available

science. The department can provide technical assistance in obtaining such information from state natural resources agencies, developing model GMA-compliant critical areas policies and development regulations, and related subjects. The department will make available to interested parties a current list of the best available science determined to be consistent with criteria set out in WAC 365-195-905 as identified by state or federal natural resource agencies for critical areas.

(2) A county or city may compile scientific information through its own efforts, with or without the assistance of qualified experts, and through state agency review and the Growth Management Act's required public participation process. The county or city should assess whether the scientific information it compiles constitutes the best available science applicable to the critical areas to be protected, using the criteria set out in WAC 365-195-900 through 365-195-925 and any technical guidance provided by the department. If not, the county or city should identify and assemble additional scientific information to ensure it has included the best available science.

[Statutory Authority: RCW 36.70A.190 (4)(b). 00-16-064, § 365-195-910, filed 7/27/00, effective 8/27/00.]

WAC 365-195-915 Criteria for including the best available science in developing policies and development regulations. (1) To demonstrate that the best available science has been included in the development of critical areas policies and regulations, counties and cities should address each of the following on the record:

(a) The specific policies and development regulations adopted to protect the functions and values of the critical areas at issue.

(b) The relevant sources of best available scientific information included in the decision-making.

(c) Any nonscientific information—including legal, social, cultural, economic, and political information—used as a basis for critical area policies and regulations that depart from recommendations derived from the best available science. A county or city departing from science-based recommendations should:

(i) Identify the information in the record that supports its decision to depart from science-based recommendations;

(ii) Explain its rationale for departing from science-based recommendations; and

(iii) Identify potential risks to the functions and values of the critical area or areas at issue and any additional measures chosen to limit such risks. State Environmental Policy Act (SEPA) review often provides an opportunity to establish and publish the record of this assessment.

(2) Counties and cities should include the best available science in determining whether to grant applications for administrative variances and exemptions from generally applicable provisions in policies and development regulations adopted to protect the functions and values of critical areas. Counties and cities should adopt procedures and criteria to ensure that the best available science is included in every review of an application for an administrative variance or exemption.

[Statutory Authority: RCW 36.70A.190 (4)(b). 00-16-064, § 365-195-915, filed 7/27/00, effective 8/27/00.]

WAC 365-195-920 Criteria for addressing inadequate scientific information. Where there is an absence of valid scientific information or incomplete scientific information relating to a county's or city's critical areas, leading to uncertainty about which development and land uses could lead to harm of critical areas or uncertainty about the risk to critical area function of permitting development, counties and cities should use the following approach:

(1) A "precautionary or a no risk approach," in which development and land use activities are strictly limited until the uncertainty is sufficiently resolved; and

(2) As an interim approach, an effective adaptive management program that relies on scientific methods to evaluate how well regulatory and nonregulatory actions achieve their objectives. Management, policy, and regulatory actions are treated as experiments that are purposefully monitored and evaluated to determine whether they are effective and, if not, how they should be improved to increase their effectiveness. An adaptive management program is a formal and deliberate scientific approach to taking action and obtaining information in the face of uncertainty. To effectively implement an adaptive management program, counties and cities should be willing to:

(a) Address funding for the research component of the adaptive management program;

(b) Change course based on the results and interpretation of new information that resolves uncertainties; and

(c) Commit to the appropriate timeframe and scale necessary to reliably evaluate regulatory and nonregulatory actions affecting critical areas protection and anadromous fisheries.

[Statutory Authority: RCW 36.70A.190 (4)(b). 00-16-064, § 365-195-920, filed 7/27/00, effective 8/27/00.]

WAC 365-195-925 Criteria for demonstrating "special consideration" has been given to conservation or protection measures necessary to preserve or enhance anadromous fisheries. (1) RCW 36.70A.172(1) imposes two distinct but related requirements on counties and cities. Counties and cities must include the "best available science" when developing policies and development regulations to protect the functions and values of critical areas, and counties and cities must give "special consideration" to conservation or protection measures necessary to preserve or enhance anadromous fisheries. Local governments should address both requirements in RCW 36.70A.172(1) when developing their records to support their critical areas policies and development regulations.

(2) To demonstrate compliance with RCW 36.70A.172(1), a county or city adopting policies and development regulations to protect critical areas should include in the record evidence that it has given "special consideration" to conservation or protection measures necessary to preserve or enhance anadromous fisheries. The record should be developed using the criteria set out in WAC 365-195-900 through 365-195-925 to ensure that conservation or protection measures necessary to preserve or enhance anadromous fisheries are grounded in the best available science.

(3) Conservation or protection measures necessary to preserve or enhance anadromous fisheries include measures

that protect habitat important for all life stages of anadromous fish, including, but not limited to, spawning and incubation, juvenile rearing and adult residence, juvenile migration downstream to the sea, and adult migration upstream to spawning areas. Special consideration should be given to habitat protection measures based on the best available science relevant to stream flows, water quality and temperature, spawning substrates, instream structural diversity, migratory access, estuary and nearshore marine habitat quality, and the maintenance of salmon prey species. Conservation or protection measures can include the adoption of interim actions and long-term strategies to protect and enhance fisheries resources.

[Statutory Authority: RCW 36.70A.190 (4)(b). 00-16-064, § 365-195-925, filed 7/27/00, effective 8/27/00.]